Sir H. Rawlinson
K.C.B.
Presd. R.G.S.
&c &c
from the writer.

DÂYA-VIBHÂGA.

THE

LAW OF INHERITANCE

TRANSLATED FROM

THE UNPUBLISHED SANSKRIT TEXT OF THE

VYAVAHÂRA-KÂṆḌA

OF THE

MÂDHAVÎYA COMMENTARY

ON THE

PARÂÇARA-SMṚTI,

BY A. C. BURNELL,
MADRAS CIVIL SERVICE—M.R.A.S.

MADRAS:
HIGGINBOTHAM & CO.,
Law Book-sellers and Publishers.
1868.

RESPECTFULLY DEDICATED

TO THE

HONORABLE H. D. PHILLIPS,

MEMBER OF THE EXECUTIVE

AND

LEGISLATIVE COUNCILS OF FORT ST. GEORGE,

BY THE

EDITOR.

PREFACE.

THE great want of translations of all the Sanskrit Law Books has been so often noticed by the Judges of this Presidency, that I consider little apology necessary for the publication of this essay. I say essay, because a real translation is impossible except after an edition of the original text according to critical rules; but this has not as yet been done in even a single instance.

For this translation three MSS. were consulted, and a Grantha MS. which appeared to give the purest text has been followed; the chief variations (which occur almost exclusively in the quotations) have been pointed out; and in the Appendix the references to such texts as have been published, will enable the reader to find out all discrepancies. It would have been easy to substitute the versions given in the published texts for the perhaps often falsified and abridged quotations of the MSS., but such an eclectic text could be of no use, as it would only represent the whim of the compiler. MSS. of the Law Books in the south of India are scarce and recent, and have been almost always made for the former Hindu Law Officers, but though very free from mere copyist's mistakes, they abound in the corrections of their former owners, which must undergo a strict scrutiny and stand or fall by the results of an examination of a large number of MSS., as the race of Law Pandits is unfortunately extinct, and their traditions with them.

The translation is made as literal as possible. C. shows that what follows is a commentary, and words introduced to complete the sense are in brackets.

ERRATA, &c.

Page	Line	For	Read
3,	20,	pledge,	hidden treasure.
6,	14,	refers to,	proves.
11,	6,	betrothed,	provided for.
,,	28,	after 'brothers' insert 'with children.'	
12,	1,	grandson,	grandson's.
14,	15,	after 'father' insert 'by himself.'	
,,	31,	partition,—some MSS. read partition of a deceased [father's wealth.]	
17,	27,	Cûdra woman,	v. l. Cûdrî, cfr. c. on Mit. i, viii, 9, (p. 403.)
,	28,	and a Nishâda,	as a Nishâda.
22,	10,	dele a,—a.	
,,	17,	brother,	brothers
,,	18,	father's,	fathers.
25,	30,	difference,	a difference.
26,	17,	has given—the case,	(has given—the case.)
28,	4,	and all,	as without distinction all his.
,,	32,	grandfather,	paternal grand-father.
,,	,	great grandfather,—paternal great grandfather. Some MSS. insert before this, 'the paternal great grandmother.'	
30,	10,	the rule,	[the rule.]
32,	3,	widow,	[widow.]
,,	33,	dele, 'servants.'	
33,	3,	do.	
,,	last line (note)	vi, 3, 8, 2,	vi, 5, 8, 2.
41,	7,	with what,	is included with what.
,,	8,	dele, is included.	

INTRODUCTION.

THE works that are included in the "Dharma-Çâstra" are, according to the opinion of the Brahmans, to be divided into two classes, viz :—

I. Smr̃tis, or works based on a recollection of some revelation, and

II. Works based on the first, but of purely human authorship.

A slight critical examination however of the works in question furnishes a different classification, viz :—

I. Original Sûtra works, which consist almost entirely of prose.

II. 1. Various redactions (mostly in verse) of the firs mentioned works.

2. Recasts of such redactions.

3. Original works, such as Bhoja's composition and the "Sangraha."

4. Forgeries to promote sectarian objects.

To these two classes may be added a third, viz :—

1. Commentaries on works of the first and second classes, and

2. Digests of extracts from the same works.

In a general way, the above classification represents pretty correctly the relative antiquity of these works, but it would not be safe to assume that it is so in regard to each separate work.

The first enquiry into the nature and origin of the Smr̃tis (or the works belonging to classes I and II) was made by Professor Stenzler,* who pointed out that some of these, works had taken much from the Gr̃hya-Sûtras, (*i. e.*, directions for the Brahmanical family rites); but the real nature of the works in question was first explained by Professor Max Müller,† and since then placed beyond all doubt by Dr. Bühler.‡

It appears that at a very early period, the Âryans proper, separated into a number of "kulas" or divisions, owing to the slight variations in the text of their sacred books, and also to differences in their rites and customs, which a long course of oral tradition necessarily caused. Ill-feeling between the different kulas soon rose to an extravagant height, and these sets of works were composed to explain, define and justify the ritual and customs of each division.||

These works were originally threefold, consisting of Sûtras treating of the great Vedic sacrifices (Kalpa or Çrauta-Sûtras); of the household ceremonies (Gr̃hya-Sûtras); and of law and customs for individuals, omitted or not, fully explained before (Sâmayâcârika or Dharma-Sûtras). Only three of these complete sets of Sûtras exist at present, though many Kalpa and Gr̃hya-Sûtras are known in different parts of India. But from Kumârila Bhaṭṭa's statement,¶ there can be no doubt that the number of them was once very large.

The Dharma-Sûtras form the foundation of the Dharma-Çâstra, but are the latest of all in point of time, as the contents prove.§ Tradition however represents a great

* v. Dr. Weber's "Indische Studien."—Vol. I, p. 232.

† In his "Ancient Sanskrit Literature."—p. 86, and 99, 133.

‡ "Digest of Hindu Law."—Preface.

|| The differences in the Vedic texts are of no importance as regards law.

¶ v. M. Müller's A. S. L., p. 121 note 2.

§ Do. p. 206.

difference in the comparative antiquity of the Sûtras, and in the case of some which are said to be recent compared with the others (*e. g.*, the Hiraṇyakeçi Sûtra) we find the three Sûtras from parts of one work, whereas in the older (*e. g.*, the Âpastamba Sûtras,) each division forms a perfectly distinct work. There is no reason to doubt that the Dharma-Sûtras are referred to in the Mahâ-bhâshya, the date of which (viz., 140—120 B. C.) has been determined by Dr. Goldstücker,* and they must therefore have been in existence above two thousand years ago. On the other hand, there is every reason to doubt if any of the metrical treatises as they exist in their present forms, can be assigned to an earlier period than the decay of Buddhism in India about one thousand and four hundred years ago. Much of the matter may be far older and taken almost without alteration from the Sûtras or the Gâthas, which are among the earliest relics of Sanskrit literature, but mixed up with these authentic fragments we find much more that evidently belongs to the most recent periods. The composition of such works must have extended to historic times, for the few extracts from Bhoja's work and the Sangraha which yet remain prove that these books differed in no way from the metrical Smr̃tis, which are attributed to the r̃shis of pre-historic times. Bhoja probably lived in the tenth century, and the author of the Sangraha, apparently before the time of Vijñâneçvara† is quoted by Devâṇḍa Bhaṭṭa and Mâdhava.

The explanation of this is not difficult. When Buddhism about one thousand and four hundred years ago began to succumb to the vigorous assaults of the Brahmans, their great champion Kumârila Bhaṭṭa tried hard to restore the old Vedic religion against which it had beenfor several centuries a successful popular revolt. The instrument he

* v. Preface to the Mânava-Kalpa-Sûtra p. 234.

† v. Mit. ch. ii. & iii. 5.

selected was the Pûrva-Mîmâmsâ system of Vedic interpretation.* This system is a very peculiar one; it takes little or no account of a Supreme Being,† but considers the Vedas as existing from eternity, and seen by certain highly-favored mortals, who have handed them down to their pupils and followers. Its object is to ascertain what is enjoined by the Vedas, and how that should be done; and hence arises a rigorous criticism of the text of the Vedas and of the nature of the sacrifices, &c., therein enjoined. Under the altered conditions of Indian Society caused by the pre-eminence of Buddhism for so long, it is not surprising that the Brahmans failed to recover their lost ground. The old exclusive system was broken down, and able as Kumârila Bhaṭta was in controversy, and in spite of the ingenuity of his application of the Mîmâmsâ system, he failed. The Pûrva-Mîmâmsâ still gives the rules for the interpretation of all the sacred works of ancient India, but no more artful system of dogmatism under a pretence of free enquiry was ever invented.

Not long after Kumârila (though hardly as near as tradition makes out to be the case), Çankara tried another and more liberal system, viz., the eclectic school of the Vedânta, which followed by the slightly different system of Râmânuja once more gave something like unity to the religious beliefs of India, and nominally restored the Vedas to their former authority. The Brahmans, as the exclusive possessors of those works, recovered to a great extent, their former political position, but the victory involved the sacrifice of the old Vedic religion as it once existed, and the adoption of many new opinions and rites totally foreign to it. To this period of eclectic pantheism, when the names of Kr̃shna and Vyâsa carried more weight than those of the half-forgotten vedic

* Colebrooke's Essays, Vol. I, p. 298-9.

† There are two schools of the P. Mîmâmsa, the older atheistic; the latter, heistic.

r̄shis, belong most of the versified Smr̄tis with the exception of an old verse, which here and there presents a strange contrast to the diffuse modern Çlokas. Such are the Pitâmaha, Prajâpati, Mârkandeya, Yama and Vyâsa Smr̄tis, and others of which the names are inexplicable, except by the supposition that they are results of Çankara's teaching.

In some cases however, old Sûtra works have preserved much of their ancient form, as is the case with the Vishṇu Smr̄ti, to which an un-vedic title and preface have been affixed, while the body of the work consists of almost unaltered Sûtras. In another (the Hârîta Smr̄ti) much has been changed, but the work has preserved its ancient name.

It seems probable that most of these works were reduced into their present form before the great commentators of the tenth century, as many are quoted from much the same text as still exists, though some verses cannot be found.

There are later Smr̄tis, but they are clearly forgeries* to serve sectarian purposes, like some of the upanishads.†

Last come the authors of the Commentaries and Digests, who belong to historic times, and whose works are the foundation of Sanskrit law. The earliest works now existing of this class, are the Commentaries of Medhâtithi, on the Mânava-Smr̄ti, and the Aparârka on the Smr̄ti of Yâjñavalkya, both are later than Çankara, though perhaps by not more than a century or two. However practically speaking, Sanskrit Law commences with the Mitâxarâ, a Commentary on the Yâjñavalkya Smr̄ti by Vijñâneçvara. This work most likely belongs to the eleventh century, and on it about a century and a half later was based the work of Devâṇḍa Bhaṭṭa, the Smr̄ti candrikâ. The author of this work closely followed the opinions of the Mitâxarâ, but

* Bühler's Digest, p. XXXIV. To these may be added another the Uttarabhâga of the Parâçara Smṛti which inculcates the worship of Râmâ in 12 chapters.

† For a complete list of the Smrtis, v. Stokes' Hindû Law Books—Pref. p. 5

altered the arrangement slightly, expanded the practical part, and abridged some of the Mîmâmsâ dissertations. This work is remarkable for good common sense, and is eminently adapted for use by practical men.

The next writer is the author of the work now translated. Except the famous Vedântâcârya, the author of countless works in all branches of Sanskrit literature, and who established the Vaishnavism of South India in its present form, he is nominally the last great original Sanskrit author in India. The date of Mâdhava is fortunately certain;* he was the prime minister of two or three of the Kings of Vijayanagara in the Deccan, and flourished during the last half of the fourteenth century. He was a Smârta Brahman, and appears in the latter period of his life to have become a sannyâsin or recluse. His brother Sâyaṇa appears to have aided him, but it is uncertain to which of the brothers the title of Vidyâraṇya Svâmin belongs, as MSS. differ greatly in these particulars.† Mâdhava was however, far from being a mere recluse, as large grants of land made by him to learned Brahmans are yet in existence.

The wonderful literary activity of the last half of the fourteenth century at Vijayanagara must be attributed entirely to the exertions of this family. The kings during whose reign they flourished, belonged to a low non-aryan caste, viz., that of the Canarese cowherds; a caste which is respectable to a certain extent on account of its members dealing with the sacred cow, though they are proverbially stupid to a degree, and of filthy habits. The popular tradition which ascribes the elevation of this family to Mādhava's father

* By inscriptions still in existence, and the notices of the Mahommedan Historians, v. Lassen, I. A. K., Volume iv, p. 156, &c.,

† v. Black Yajur Veda, Vol. I, Note on p. IV. I regret that I am unable to refer to Dr. Hall's "Contributions to a Bibliography of the Indian Philosophical Systems," in which this point is, no doubt, cleared up. Telugu MSS. generally mention Sâyaṇa and Grantha MSS. Mâdhava as the author, and the title of Vidyâraṇya-Svâmin is given to both; Indian tradition fuses the two into one person.

is probably true; he most likely chose a stupid instrument for the renovation and restoration of Hindùism, which he had at heart, as his own influence would thus be more powerful.*

To suppose that all which appears with Mâdhava's name was written actually by him is impossible, though it is highly probable that he actually superintended most and perhaps contributed to some. The vicious practice of putting the name of an influential man to a work in order to secure his patronage has long prevailed among the learned of India, and this throws doubt upon the authorship of many works.

Among the compilations attributed to Mâdhava and Sâyaṇa, and which are for the most part still in existence, are commentaries on the four Vedas, and their Brâhmaṇas, besides a large number of works on philosophy, law, vedic ritual and astrology, but as might have been expected, these works are chiefly based on the treatises of earlier writers who are sometimes but not always quoted.

This is peculiarly the case in the Commentaries on the Vedas, and though much has been added, it is plain that other earlier works have been largely used.†

* The Vijayanagara family at the beginning of the sixteenth century produced a famous Sovereign, King Kṛshna, who restored nearly all the temples of the South of India to the state in which they remain.

† The recovery of greater part of Bhaṭṭa Bhâskaras c. on the Black Yapir Veda and of Bharatasvâmin's c. on the Sâma Veda proves that the works attributed to Mâdhava on the same subject, are largely indebted to these old writers, except in the Mîmâmsâ disquisitions. Bhaṭṭa Bhâskara is said to have lived nearly four hundred years before Mâdhava and has left Commentaries on the Samhitâ, Brâhmaṇa and Âraṇyaka of the Black Yajurveda. He refers to earlier Commentaries by Bhavasvâmin and others, which "treat only of the meanings of words." Bhavasvâmin must thus be reckoned among the oldest of commentators; his Baudhâyana-dvaidha vrtti still exists but there is no trace of a c. on the Y. V. written by him. The question of the value of Indian learned tradition has been much discussed, but it will always be difficult to decide *how much* of it is of use. Profr. Goldstücker (Pref. to "Mânava-Kalpa-Sûtra") and Dr. Haug (Aitareya Bráhmaṇa) have given special proof of its general value; Drs. Muir, (J. R. A. S, II.) and Roth (Z. d. D. M. G. XXI, Ueber gelehrte tradition in alterthume besonders in Indien—) have argued against it on general grounds.

The Mâdhavîya Commentary on the Parâçara-smr̃ti was commenced after the Commentaries on the Vedas; it is an immense work in three sections, and the part now translated is a small portion of the last section, which is rather an appendix, as the text of the Parâçara-smr̃ti only extends to the end of the second section, leaving jurisprudence unnoticed. The first two sections have been fully described by Dr. Aufrecht,* they are diffuse to a degree, and the writer seems to have tried rather to display his learning than to illustrate the text before him. The third section is much more concise, and has less original matter in it. Both in form and in matter, it closely follows the Mitâxarâ of Vijñâneçvara and the Smr̃ti-çandrikâ, though these works are only once each mentioned by name.† Compared with the quotations which occur in those works, the Vyavahâra section presents little or nothing that is new or important. In one or two places, the Mîmâmsâ disquisitions have been slightly altered (though in this respect the Mitâxarâ is closely followed), and in some places matter of no practical importance is introduced. The style is very concise, and imitates the Sûtras.‡ In the arrangement the author follows rather the Mitâxarâ than the Smr̃ti-çandrikâ. On the whole, (as far as the Law of Inheritance goes) the Mâdhavîya treaties on Jurisprudence is little more than an abridgement of the Mitâxarâ, except in some of the last sections.

This close connection between the two works is confirmed by the important place allowed to the texts of the Yâjnavalkya, which lead on every topic, and in this follow the Mitâxarâ which is a commentary on the Yâjnavalkya Smr̃ti.§

* Catalogue Codicum Sanscritorum, pp. 263, 271.

† v. Appendix.

‡ *e. g.* The conclusion in § 43 omits the words "without a son," which are essential to the sense, but understood, as the topic from § 34-43, is the succession to the property of a man deceased *without leaving a son.*

§ v. §§ 8,18,21,24,27,30,33,34,47,48,50, &c.

A great difference between the original Smṛtis is apparent, and this in accordance with the differences between the Brahmanical çâkhâs in other respects, but there is no reason to believe that these works do not represent the actual laws which were administered. On the other hand, the case of the modern so-called digests is very different. They are based on the principle that one Smṛti is to be supplemented by another, and thus the authors are sometimes much embarrassed by the differences in those books. This theory no doubt arose from the endeavours of the Vedantists and especially Çankara to bring every thing into harmony,* and is conclusive as to the authority of the Smṛtis at that time. Had they not given place almost entirely to custom it would not have been possible to attempt the compilation of digests on such a plan; but though so far obsolete, the belief that their texts were founded on the Vedas, saved them from total neglect.

The digests however were never intended to be actual codes of law; they were written in a language understood by a very few,† and because of the Vedic quotations in them, they must have remained almost exclusively in the hands of the Brahmans. Again they refer for the most part to the Brahmans only, and utterly ignore the numerous un-Âryan peoples scattered about India, and which form the greater part of the population of the south, whose usages (whatever they may call themselves) can in no wise be referred to the Dharma Çâstra.‡ There is not a particle of evidence

* The great differences between the Dâya-bhâga and Mitâxarâ arise from attempts to define 'property.'

† No vernacular versions of these works were thought of, before the beginning of the 19th century. Mr. F. W. Ellis, had the earliest versions made in Tamil, viz., of the Smṛti Candrikâ and Mitâxâra, c. 1815. Both works remain unfinished. The half Sanskrit Vyavahâramâlâ of Malabar is of the last century.

‡ Are there any Âryans except Brahmans in South India? If not, and there seems little doubt that this is the correct opinion, the authority of the Dharma-Câstra must be much restricted.—Cfr. Caldwell's Dravidian Grammar. p. 73-77. The few Xatriya families on the Western Coast are under local law.

to show that these works were ever even used by the Judges of ancient India as authoritative guides; they were, it is certain, considered as merely speculative treatises, and bore the same relation to the actual practice of the Courts, as in Europe treatises on jurisprudence to the law which is actually administered. As the Dharma-Çâstra is assumed to be of divine origin, and therefore worthy of study for its own sake without any consideration of practical ends, nothing might be omitted and customs admittedly obsolete were discussed with as much seriousness as those still prevailing. Less than this would not satisfy Brahmanical desires for exhaustive completeness in the treatment of a subject; and this is why the question of the division of property between sons by wives of different castes is considered, though marriages between persons of different castes are now entirely unknown, and the only persons of mixed origin in South India are the children of the " Dâsîs"* or consecrated female dancers attached to Pagodas, whose fathers are Brahmans or persons who belong to the higher classes of Dravidians, but they themselves belong to no varṇa or jâti mentioned in the Dharma-Çâstra.

As all the digests proceed according to one system of interpretation, viz., the Mîmâmsâ, the different conclusions at which the authors often arrive, are to be traced to differences in their interpretation of original texts from Smṝtis, not to local usage; and therefore they are by no means decisive except so far as they convince the reader, and the distinction of " schools of law" is (besides being entirely strange to the books themselves) quite meaningless. The Dâya-bhâga has long been studied at Nava-dvîpa, and commentaries written on it there, so Colebrooke could safely write of the Bengal

* v. Ellis' Kural, p. 177. Those attached to the Civa temples belong generally to the Kai-kkolar or weaver's caste; those to the Vaishnava to the caste of cowherds. I have translated " dâsî" in the text by slave- girl, which is the original meaning, but in South India at present a female dancer attached to some temple must be understood.

as opposed to the Benares school where the Mitâxarâ was studied and annotated, but the addition made by subsequent writers of Ândhra, Dravidian, and other schools, is without foundation and useless. Except the Dâya-bhâga and its commentaries, all the other treatises on law are mere recasts of the Mitâxarâ and the Smr̃ti-Candrikâ, and written entirely without reference to local peculiarities. Custom has always been to a great extent superior to the written law in India, and especially so in the south; but the Indian jurists never attempted to record such merely human details, hence the difficulty of the law of marriage and caste usages on which questions of inheritance often depend. By custom only can the Dharma-Çastra here be the rule of others than Brahmans, and even in the case of Brahmans it is very often superseded by custom.

LAW OF INHERITANCE.

1. THE partition of heritage is next explained ; its definition has been given by Nárada who says :—" Where a division of paternal wealth is carried out by children that is a topic of law called by the learned ' Division of heritage.' "

Definition.

2. Heritage is that property which becomes the property of another by reason of his relationship to the owner. It is of two kinds, viz., unobstructed and obstructed. The wealth of a father or of a grandfather and such others is unobstructed heritage ; the wealth of a son and such others is obstructed heritage, as regards the father and such others. The partition of it, is called partition of heritage. Hence Dhâreçvara says, " that wealth which has come either through the father or through the mother is called heritage."

Heritage of two kinds.

3. Manu has declared the time of partition :—" After the death of the father, and after the death of the mother, the brothers having come together should divide equally the paternal wealth ; while the two are alive they are powerless to do so."

Time for partition.

C. " After the death of the father ;" (*i. e.*) is the time of partition of the wealth of a father.

" After a mother ;" (*i. e.*) is the time of partition of the wealth of a mother.

And hence it has been said that after the father's (death) although the mother be alive, partition of the father's wealth is to be made ; so also after the mother's (death), partition

of her property is to be made although the father be alive; because in the case of partition of the wealth of either of the two after the death of both, it would be useless to specify the time. And this has been declared by the author of the Summary:—" The partition of the father's wealth should take place though the mother be alive, for the mother has not by independence power to possess apart from her husband; so also though the father be alive, partition of the mother's wealth (should take place); for if there be offspring, the husband is not master of the Strîdhana."

C. The meaning is, as on the death of her husband the wife of a father has not ownership by independence in the wealth of her husband; so on the death of the wife if there be offspring, the husband is not owner of his wife's property; and for this reason, though either of the two be alive, the partition of the property of the other is proper. Hence we conclude that while both of them are alive, the sons have no independent power as regards partition of their acquired wealth.

So Çankha says:—" Let not sons make partition of wealth while the father is alive, although after their birth the sons have ownership in their father's wealth; yet as long as their father is alive, let them not divide his wealth, for they are not competent to carry out partition by reason of their want of independence in religious duty."

C. " Want of independence;" (*i. e.*) want of independence as to receiving and giving. So Hârîta has said:—" While the father lives, the sons have no independent power in receiving wealth, relinquishment of it, or fines."

" Receiving of wealth;" (*i. e.*) enjoyment of wealth.

" Relinquishment;" (*i. e.*) expenditure.

" Fine;" (*i. e.*) of servants, &c., for punishment.

" Want of independence in religious duties;" (*i. e.*) not being engaged in sacrifice, study, &c.

Disquisition.

4. Now Devala says:—" After their father is dead the sons should divide their father's wealth, for they have not ownership if their father is without defect." But this means want of independence, because it is a matter of notoriety that sons have by reason of their birth ownership in their father's wealth.

[Argument contra.]

But how can ownership be a matter of notoriety when it is only to be inferred from the Çâstra? That it is capable of being known by the Çâstra is to be inferred from such saying as, " An owner (becomes so) by inheritance, partition, purchase occupation and acquisition. For a Brahman acceptance is an additional mode (of becoming an owner); for a Xatriya conquest; and for a Vaiçya and Çûdra, earning wages."

C. " Inheritance" (*i. e.*) unobstructed heritage.

" Partition" (*i. e.*) obstructed heritage.

" Occupation" (*i. e.*) the appropriation of water, grass or wood, not previously in anybody else's possession.

" Acquisition" (*i. e.*) obtaining a pledge and the like.

In such cases one becomes an owner. What is obtained by a Brahman by acceptance and similar means is additional; so what a Xatriya obtains by conquest and the like.

" Earned;" (*i. e.*) what additional is obtained as wages by a Çûdra for service, &c., to the twice-born. So what is obtained by those born of the direct and inverse admixtures of caste, by such arts as they know, as chariot-driving, &c., this is an additional (mode of becoming an owner); such is the meaning. So also the author of the Summary argues:— " He in whose hand anything is, of that he is not the owner (on that account); does not the property of one come into the possession of another by robbery and the like? Therefore ownership is to be inferred from the Çâstra, and not from possession." The meaning is, that if we see anything

in any one's hand we cannot therefore conclude that he is the owner of it, because on seeing one man's property in another man's possession by robbery, &c., there would in that case be ownership. Hence we can only infer ownership from the Çâstra. Moreover if that man be the owner in whose possession anything is found, then one could not say, this man's property has been taken away by that man; because of the ownership of that man in whose possession it is seen. But the property of one man that has been taken away by another is not the property of the taker, for like the kind of gold, silver and the like, there can be no doubt whose the property is. Besides if ownership is a mere mundane matter, then the direction for punishment of a man who by sacrificing or like means, takes wealth from an improper person would be improper; but it is said: "whatever Brahman desires wealth, &c," hence ownership can only be inferred from the Çâstra.

[Arguments pro.]

Not so. Ownership is a mundane matter, because of its being a means to mundane things and objects, like rice. But if you rejoin, that this is not a valid cause, as the Âhavanîya and other Vedic fires are capable of being the means of mundane cookery and the like; we say it is not so, they are not the means of cooking and the like by the Âhavanîya and similar forms, but by the form of ordinary fire and the like; so there is a difference.

Again we conclude that the ownership is a mundane matter because of directions respecting the ownership of wicked men.

But if then it be asserted that the saying of Gautama that "One becomes an owner by heritage, partition, &c.," is incorrect, we say this is not the case, because the Çâstra is a means to specify the ways of acceptance, &c., and as for such sayings as, "One should not say that the property of another has been taken away by this man and the like," it is untrue;

for doubts as to ownership arise from doubts as to purchase and the like, which are the causes of ownership. But if it be asserted that the direction to punish one who gains wealth by sacrificing, &c., by such sayings as, "He who desires, &c.," is improper; we say it is not so, because though ownership is a worldly matter, it is regulated as to means; and the direction to punish a man who acquires wealth by transgression of such rules is proper; so also the direction for penance; "By giving it up they become pure." So as ownership is a mundane matter, wealth received by acceptance from an improper person, &c., is to be divided; as because of its being capable of being the heritage of the sons, &c., it is property, and no fault attaches to them; for Manu recollects (from some inspired work) that there are seven proper ways of acquisition, viz., "heritage, gain, purchase, conquest, usury, industry, and acceptance from a proper person."

Another disquisition.

But here we have to consider, is there ownership because of partition, or does partition take place as to what is owned? The arguments contra are; ownership comes by partition and not by birth; for if it came by birth, then on the ground that the property belongs equally to his son though only just born, there could be no direction regarding the father's authority for 'âdhâna' and such acts as are accomplished through property. Moreover, "whatever has been given to a woman by an affectionate husband even after his death she may consume it, or give it away, just as she pleases; except what is immovable," and this saying as regards gifts of affection would be improper. Moreover the saying, "the father is lord of the gems, pearls and coral, of all of them; but of all that is immovable, neither the father nor grandfather. The garments and ornaments are consumed by the father's favor; but though the father allow it, immovable property should not be so consumed," refers to immovable property acquired

by the grandfather. Therefore ownership is by reason of loss of an owner, or by partition, and not by birth. (Pro.) It is a matter of notoriety that, " they get ownership by birth ;" and the word ' partition' implies many owners, as is well known, and does not refer to either another person's property or to property lost. Moreover lordship is inferred by the origin of ownership by birth, as Gautama says ; " the teachers say one may get lordship of wealth by birth."

Also it is incorrect to say that the mention of gems, pearls, coral, &c., refers to property acquired by the grandfather, because it is said " neither the father nor the grandfather, &c." And the saying, " if there be sons and grandsons even the self-acquired property of the grandfather is not to be given away," refers to ownership by birth. As for the saying, " there would be no authority for ' âdhâna' &c., and such acts as are done through wealth," that is improper, because there is authority from this saying ; and as to what has been said, that if ownership comes through birth then Vishṇu's saying, " What has been given by an affectionate husband &c.," is incorrect, that also is improper, because the husband has authority to make a gift out of affection, by reason of the mention of property generally ; but in the case of immovable property gained by himself there is dependence on the sons, &c., as is said ; " As for immovable property and bipeds even though self-acquired, there is neither gift nor sale without making all the sons parties :—Those who are born, those not born, and those in the womb desire a means of livelihood, there is therefore neither gift nor sale." But in times of calamity and the like there is independence regarding sale, &c., for even by himself he may in time of calamity give pledge or sell immovable property on account of the members of the family, or for dharma. Hence we conclude that it is rightly said that ownership is through birth.

5. We return now to the subject.

Yâjñavalkya has also mentioned the time of partition :—

1. Partition made by the Father.

"If the father makes a partition he may at his will separate his sons, or he may give the eldest a superior share, or all may share alike." C. When the father wishes to make partition, then let him separate his sons at his will; this is the mode of partition at will. "Or the elder with a superior share;" this is the mode of partition with a deduction, viz., what is best of all the property for the eldest, a half then for the middle son, and a fourth for the youngest; "or all," viz., the eldest and other sons are to be made equal sharers. But this unequal mode of partition refers to self-acquired wealth. The unequal division at the will of the father would be improper in the case of what is acquired by succession, as all the sons have an equal right in it.

6. Nârada has mentioned another time for partition :—

2. Another time of partition.

"After this the sons may divide the father's wealth equally, viz., when the mother's courses have ceased, and the sisters are married, and when the father's desire has ceased, or he has no longer care for worldly affairs."

Çankha also says :—"Even against the father's will there may be partition, if he be old, perverse in mind, or affected with chronic disease." C. The meaning is; "against the father's will," (*i. e.*) if the father does not desire division.

"Old; (*i. e.*) if he be very old.

"Perverse in mind;" (*i. e.*) not in a usual state of mind. "Affected with chronic disease;" (*i. e.*) seized by an incurable disease. In such case there is partition at the will of the sons alone. The mention of chronic disease also includes excessive anger, &c. Hence Nârada says :—"A father who is diseased or enraged, or whose mind is devoted to sensual objects, or who acts contrary to the Çâstra has no power in partition."

Yâjñavalkya has mentioned a peculiarity in the case of

equal partition being made by the father :—" If he makes the shares equal, then the wives are to have equal shares if they had no Strîdhana given them by their husband, or father-in-law." If the father of his own accord makes the sons equal sharers, then the wives to whom Strîdhana has not been given are to be made equal sharers with the sons; but if Strîdhana has been given them, he should give them a half;" (*i. e.*) they are sharers in the half of the share of a son.

Object of partition.

7. Prajâpati says that division is to be made for the purpose of increase of dharma after the father's death;—" So they may live together, or separately out of regard for dharma. If they are separate dharma increases, therefore separation is right." Bṛhaspati says:—" The worship of the pitṛs, devas, and Brahmans, is single in the case of those who live by one dressing of food, (*i. e.* together) but in the case of divided members of a family it occurs in each separate house."

3. Partition after the death of both parents.

8. Yâjñavalkya has declared the rule of partition after the death of both parents;—" After the death of both parents let the children divide equally the property and debts."

Unequal partition obsolete

9. However in the case of partition after the death of both parents, unequal partition has been allowed by Manu :—" After the death of the father and mother the eldest son may take all his father's wealth, and the others should live in dependence on him, as on a father. The twentieth part is the share of the eldest, besides that thing which is the best of all the wealth; the half of that for the middle son, and the quarter for the youngest. But if no deduction is made then let the following be the arrangement of the shares; let the eldest take a share and an additional one, the next son after him a share and a half, and the younger each a share, thus the rule has been laid down."

So also Gautama says :—"The twentieth part, a pair of cows, a car and a pair of animals with teeth in both jaws yoked to it, and a bull (belong to) the eldest. Cattle blind of one eye, old, or with broken horns or deformed tails, (belong to) the middlemost; if there be many such (cattle), sheep, grain, iron, a house, a yoked (cart), and one of each kind of cattle (belong to) the youngest. All the rest (is to be divided) equally." C. The meaning is as follow; of all the wealth of the father a twentieth part is (the share) of the eldest. "A pair;" (*i. e.*) a pair of cows. "With teeth in both jaws;" (*i. e.*) horses, mules, asses; a car yoked with any of these as they may occur.—"Lame;" (*i. e.*) old. "With broken horns;" (*i. e.*) the horns of which are injured." "Deformed in the tail;" (*i. e.*) the tail of which is injured. Because there is no distinction made (in regard to them), a share for the middlemost is to be made of cows, horses, &c., of either kind as they occur; but for the youngest, "grain;" (*i. e.*) rice, &c.; "iron;" (*i. e.*) metal and a yoked (cart) and one of each kind of cattle, viz., cows, &c., (such) item by item in succession is the share of the youngest. Br̃haspati says :—"Let the eldest by birth, learning, or good qualities, take a portion from the inheritance." Kâtyâyana says :—"So that that wealth having been divided may be used for sacrifices; superiority in shares is to be arranged by the learned." Nârada has also in the case of partition during (the father's) life-time directed unequal partition :—"The father advanced in years may of his own will separate his sons; the eldest (he may endow) with a best share, or as he may wish. But those who have been separated by the father with equal, lesser, or greater wealth, let that be lawful for them, for the father is lord of all. Let the father when making a partition, keep two portions for himself." Br̃haspati says :—"If equal, less, or greater shares have been arranged by the father for any of them, such (shares) are to be maintained, otherwise they should be deprived." Thus then at partition during (the father's) life-time, or after (his) death is unequal partition allowed; how then is it

ordered that, "the sons should divide equally? Quite so." Unequal division (is allowed) by the Çâstra, nevertheless on account of the detestation in which it is held by everybody, it is like the Anûbandhya, &c., not carried out. As has been said by the authority of the Summary :—" Just as this practice of appointing (a widow) and also the killing of the Anûbandhya (paçu), so also at the present time partition after deduction does not exist." Âpastamba also having given his own opinion :—" Let him while living, divide equally the heritage between his sons," and having explained according to peculiar opinions, the taking by the eldest of all the wealth :—" Some say the eldest succeeds," and having exhibited partition by deduction according to the opinion of others :—" In some places gold, black cows, black produce (oil-seeds) belong to the eldest; (or) the chariot of his father and the house-utensils; some say that the ornaments and wealth (given by) relations belong to the wife"—disallows it as "forbidden by the Vedas;" that "Manu divided his property between his sons" without any difference, is said in the (Black Yajur) Veda. "Therefore unequal partition though it is allowed by the Çâstra is not to be made because it is opposed to public opinion and the Çruti, and the rule that "they should certainly divide equally," prevails.

10. When a son does not wish for his father's wealth because he can earn a living for himself, something or other should be given him, and partition should then be made. Yâjñavalkya says (that this is to be done) in order to prevent his sons, &c., from desiring a share :—" One who is able and does not desire a share may be separated after giving him something."

11. It must be understood that, sons can only share their mother's property if there be no daughters. So he says:—"The daughters share among them what remains of a mother's (property) after (her) debts are discharged; and in their default, the issue." The daughters should share the wealth of their mother after the discharge of the debts incurred by her. But hence we

conclude that though there are daughters, yet the sons should divide their mother's wealth which is equal to or less than the debts incurred by her.

12. Gautama with respect to this has mentioned a peculiarity; "Strîdhana belongs to daughters who are not married or betrothed." The meaning is, if there are married and unmarried daughters, the mother's wealth belongs to the unmarried ones; if there are married daughters, both with and without property, then it belongs to those without property.

13. Yâjñavalkya has laid down the rule about division of a grandfather's property by grandsons; "The disposal of the heritage is according to the fathers in the case of sons by different fathers." The meaning is, that where undivided brothers have died after begetting children, and where one has two, another three, another four sons, then as the grandsons equally with sons have by birth a right in the grandfather's property, they take their father's share only; viz., the two sons one share, the three sons one, and the four sons one.

Partition of a grandfather's property.

So Bṛhaspati says in regard to this:—"Their sons whether equal or unequal in number, are declared to be takers of their father's share." "Their sons;" (*i. e.*) the sons of deceased persons. The sons of each several one; "equal or unequal" (*i. e.*) more or fewer in number; the meaning is, they take each (set) their father's share.

14. Kâtyâyana has laid down the rule for the case when a brother has died who is between two undivided brothers, and his son has not obtained a share from his grandfather who is also dead; "when an undivided younger brother is dead, one should make his son a sharer in the property if he has not received means of livelihood from the grandfather; he should receive his father's share from his paternal uncle or his (*i. e.*, uncle's) son. That is the share of all the

brother's according to equity, let his son (*i. e.*, the grandson) receive that; let there be a cessation beyond":—" Let his son receive it." The meaning is this; The son of that grandson as lord of the property capable of partition should in the default of his father receive his share; but as for others beyond him in succession, there is a cessation of the partition of an aged grandfather's property.

So Devala says:—" The rule is that partition extends to the fourth in descent among members of a family who are undivided co-parceners, and who live together. Such members of a family are Sapiṇḍas; beyond them there is a cessation of the offering of funeral cakes."

15. But if it be asked, how does one whose father is alive share with his father the grandfather's property? Vr̆ddha Br̆haspati says:—" Like shares have been declared for the father and the son in the case of movable and immovable property acquired by the grandfather."

Yâjñavalkya (says):—" Land which has been acquired by the grandfather, a nibandha (grant), and property, in these let there be the same right to both the father and son." " Land;" (*i. e.*) rice lands, &c. " Nibandha;" such as, so many leaves of a bhâra of leaves, or so many nuts of a bhâra of betel nuts."

" Property;" (*i. e.*) gold, silver, &c., acquired by the grandfather by purchase and such means.

16. Now the partition takes place because it is a well known matter that the father and son have a right, but because the right is similar or equal, the partition is not at the will of the father, nor has he two shares; and so the rule, " the arrangement of shares is according to the fathers," is declaratory of equal right. And on this account such rules as " the father when dividing may take two shares for himself," because they refer to unequal division were in force in a different Yuga, or refer to property self-acquired. In no

case is there an unequal partition in the case of the grandfather's property. Hence we may infer that in the case where an undivided father gives away or sells the grandfather's property, the grandson may forbid him.

Exception in the case of partition of recovered property.

17. Manu has said that sometimes in the case of property gained by the grandfather there is partition at the will of the father, as in the case of self-acquired property :—" The father who recovers ancestral property which was not obtained, need not against his will divide that among his sons, as it is gained by himself." The property that was acquired by a grandfather and taken by some one else, if not recovered by the grandfather; but if the father recovers it, then as it is like property self-acquired, he need not divide it with his son's against his will; and so it has been declared that in the case of property acquired by the grandfather, the partition is at his will. Bṝhaspati says :—" The right of ownership of the father has been declared in the case of a grandfather's property recovered by him, and in what he has earned by his own power, or by his knowledge or heroism, &c." —Kâtyâyana also says :—" What has been recovered by his own exertion after being lost, and what he has himself obtained, all that the father cannot be forced by his sons to divide." The meaning is, that the property which was inherited by course of descent but which was seized by other persons, and that which he himself has acquired by learning, heroism, &c., all that the father cannot be caused by his sons to give in partition.

Case of a son born after partition.

18. Yâjñavalkya has declared the manner of arrangement for the share of a son who is born after partition has taken place :—" A son who is born of a wife of the same caste among divided (sons), has a share." The meaning is this; if after sons have been divided, a son by a wife of the same caste is born, he takes the father's share and the mother's

also, if there be no daughters as is said :—" In default of those, the issue takes."

19. But a son who is born of a (wife) not of the same caste (as the father), takes his share of the father's (property) and also all his mother's. So Manu has said :—" Let a son who is born after partition take the paternal property." What belongs to both parents is paternal wealth. This is according to the saying, " One born before partition has no power over his parent's share, and one born after has no power over his brother's share ;" (*i. e.*) the one who was born before partition has no power over the share of his father and mother, because he formerly entered into partition with his father, and the one born in a state of partition has no power over his brother's share.

20. What has been gained by the father after partition, that is the property of (the son who is) born after partition. Thus Manu has declared :—"What has been self-acquired by a father who has been separated from his sons, all that is the property of the son born after partition ; the other sons born before have been declared to have no power with respect to it." Manu has also said that in the case of sons who have been divided and again united with their father there is partition for them with him who is born after :—" He should divide his property with those who have been re-united."

Son born among divided sons after his father's death.

21. But how if a son be born after his father's death amongst divided sons ? About this Yâjñavalkya has said ;—"Let his share be from that which is visible, allowance being made for increase and decrease."

The meaning is that for a posthumous son who is born after the time of partition, the share is his proper share of what is visible, viz : of the property taken by his brothers, after allowing something for the increase or decrease, viz :

the waste and profit. But this must be understood to apply to the case of one who is born after partition, of a wife whose husband is dead, if her pregnancy was not apparent at that time. But if pregnancy be apparent, the birth of the child should be waited for, and partition then made. And the partition of brothers is according to Vasishṭha's saying :—" If any women are without children, till they get sons, there is not partition."

The son born after partition has no power of forbidding a gift of property by (his) parents to divided sons; and Yâjñavalkya has declared that what is given is not to be taken away:—" What has been given by the parents to any one, let that be his property."

Mother's share.

22. Yâjñavalkya has declared the arrangement of a mother's share in partition of a deceased person's property :—" After the father's death, let a mother take a share equal (to the shares) of those who divide." Another Smṛti says :—" Let a mother who has no property of her own, take an equal share in the case of division by the sons." The meaning is that a mother who has no wealth, who is destitute of Strîdhana of her own, should take when division is made by the sons a share equal to a son's share.

The mention of mother is to include other wives of the same husband. So Vyâsa says :—" Childless wives of the father are declared to be equal sharers, and all grandmothers are declared equal to the mothers." But as for what some say, viz: that the meaning of the saying, " let a mother take an equal share," is that the mother should take wealth sufficient for her livelihood, that is not the case; for then the words ' equal' and ' share' would be useless. But it is said that if there be much wealth, she takes enough for her subsistence; if there be little, a share equal to a son's, but this is also (wrong), because the rule (would have the defect) of being variable.

23. Vyâsa has declared the mode of partition of sons born of different mothers but of the same caste and equal in number.—"If there are sons of the same caste and equal in number, begotten by one man but by different mothers, for them partition according to mothers is ordered." Bṛhaspati says:—"If many (sons) are begotten by one man, and they are equal in caste and number, if (they are) without property their mother's shares are taken by them." He has also said in regard to the partition of (such sons) if unequal in number:—"For brothers of the same caste but unequal in number, shares for males (*i. e.*, for each son) are prescribed."

Sons by several wives of the same caste.

24. Yâjñavalkya has explained partition by sons (by wives) of different castes:—"The sons of a Brahman by women (wives) of different castes take four, three, two, or one share, the sons of a Xatriya take three, two, and one share; and the sons of a Vaiçya two and one share."C. "The sons of a Brahman by women (*i. e.*, wives) of different castes;" (*i. e.*) sons begotten by a Brahman on women of the Brahman or other castes, viz: Brâhmans, Mûrddhâbhishiktas, Ambashṭhas and Nishâdas, in order these take severally four, three, two, and one share. "The sons of a Xatriya;" (*i. e.*) the sons begotton by a Xatriya on women (wives) of the Xatriya caste, and so on, viz: Xatriyas, Mâhishyas, Ugras; and these take three, two, and one share. "Sons of a Vaiçya begotten on women (wives) of the Vaiçya and Çûdra castes, viz: Vaiçyas and Karaṇas, take two and one share. Manu says:—"If a Brahman has four wives (who are women) of the successive castes, if they have sons, this rule of partition has been handed down; having divided all the wealth into ten shares, let a man who knows the law make a just partition." Thus:—"Let the Brahman son take four shares, and the son of the Xatriya woman three, let the son

Sons by wives of different castes.

of the Vaiçya woman take two, and the son of the Çûdra woman one share." But this refers to property not including land obtained by acceptance. Hence Bṛhaspati says:—"Land obtained by acceptance is not to be given to the son of a Xatriya woman, &c. If the father gives it (to such a son,) when he (the father) is dead, the son of the Brahman woman may take it." Because it differs from acceptance, land obtained by purchase, &c., may belong to the sons of Xatriyâs, &c. By reason of the prohibition as regards a Çûdra woman's son, a son begotten by (any of the) twice-born men on a Çûdra's wife does not deserve a share of the land. But as regards Manu's saying, "The son of a Çûdra woman by a Brahman, Xatriya, or Vaiçya does not share in the property, but whatever wealth the father may give such a son let that be his property," as this refers to property given (by the father) out of affection, there is no contradiction.

Nârada has declared that a single son born of a direct admixture of castes takes the whole wealth:—"Let a single son born in the direct order of admixture take all his father's property." But this refers (to all) except a Nishâda hence he has said also:—"A single son who is a Nishâda takes a third part of a Brahman (father's) property; let the Sapiṇḍa or Sakulya offer the funeral oblations, take two parts." But Manu says:—"If he have (other) sons or not let him not give more than a tenth part to a Çûdra." This refers to a disobedient son by a Çûdra woman (wife). But an only son begotten by a Xatriya or Vaiçya on a Çûdra woman (wife) should take a half; and a Nishâda a third part. So Vishṇu says:—"An only Çûdra son of a twice-born man takes half of the wealth of his parents, the other half follows the same course as a childless man's wealth," (*i. e.*) the other half becomes the share of the next Sapiṇḍa.

25. Vyâsa has said that in the case of partition of a

Case of brothers and sisters whose rites have not been performed.

deceased person's property if there be any brothers or sisters whose rites have not been performed, they are to be initiated by the brothers whose rites have been previously performed:—"Those among them whose rites have not been performed are to be initiated by their elder brothers out of their father's wealth; and the maidens also, as is proper."

Yâjñavalkya has however mentioned a difference in the initiation of sisters:—"Those of the brothers whose rites have not been performed are to be initiated by the brothers previously initiated, and the sisters also, each brother having given a fourth part of his own share."

C. By brothers making a partition after their mother's death, those brothers who have not been initiated are to be initiated out of the collective property; and uninitiated sisters are to be initiated after giving them a fourth part of the share of a brother of the same caste. From this, it is inferred that daughters after their father's death take shares. So Manu says:—"Let brothers give separately from their own shares to their maiden sisters, viz: a fourth part of each share, and let those who are unwilling to give be degraded." Brothers of the Brahman and other castes should give to their sisters of the Brahman and other castes a fourth part of each of their shares, of the shares fixed for each caste. But this is said," if there be a Brahman wife and one son and one maiden daughter, these having divided the father's wealth into two parts and having divided one of these parts into four, and given a fourth part to the maiden, the son takes the rest. But if there be two sons and one maiden daughter, then the two sons take the remainder after having divided their father's property into three parts, and after dividing one of such parts into four and giving the maiden a fourth part. But if there be one son and two maiden daughters, then the son take all the remainder after dividing his father's property into three parts, and one part

into four and giving two such shares to the two maiden daughters. Such is the system to be followed in the case of brothers whether equal or unequal in number, and sisters whether equal or unequal in number, if of the same caste. But if there be one son by a Brahman wife, and one maiden daughter by a Xatriya wife, then the son of the Brahman wife takes the remainder after having divided his father's property into seven parts, and after dividing the three shares which belong to a son by a Xatriya wife into four and giving the Xatriya daughter such a fourth part. But if there be two sons by a Brahman wife and one daughter by a Xatriya wife, then the two sons by the Brahman wife divide between them all the remainder of their father's property, after dividing it into eleven parts and after dividing the three parts which are the share of a son by a Xatriya wife and giving the Xatriya wife's maiden daughter one such fourth part." Such according to Medhâtithis' Commentary (on Manu) is the universal rule in the case of brothers and sisters unequal in caste, whether unequal or not in number; but according to Vijnâneçvarayogin this is the meaning, viz: by the word 'fourth part' is intended wealth sufficient for the ceremony of marriage only, and hence it is inferred that there is no partition of heritage for maiden daughters whose rites have not been performed; and this is also the opinion mentioned in the Candrikâkâra:—"Hence the mention of shares is not on account of partition of heritage but for the sake of the ceremony of marriage." So Devala says:—"To maiden daughters some paternal property, viz: property for marriage purposes, is to be given." Now what is proper in this case that is to be admitted. Whatever the father gives at a partition during his life-time, that she takes; because maidens are especially mentioned. Nârada says in case no paternal property exists:—"If there be no paternal property, then by deducting from each one's own share, the ceremonies are certainly to be performed; in this

case a diminution is intended." The ceremonies of brothers and sisters (*i. e.*) the Jâtakarma, &c., even if there be no paternal property are to be performed by the brothers previously initiated, because of their importance.

26. Çankha says, that at the time of the division of the paternal wealth the maiden daughter takes ornaments, &c. previously given her:—" When the heritage is divided the maiden daughter takes an ornament and the Strîdhana."

27. Yâjñavalkya has declared the form and way in which the chief and substitute sons take the heritage:—A legitimate son is one born of a lawful wife, the son of a daughter is equal to him; the Xetraja is a son of a wife by a kinsman or other appointed to beget issue for the husband; a Gûdhotpana is one who is secretly born in the house; a Kânîna is a son of a maiden; 'a Paunarbhava,' is a son born of a woman who has been married before, whether she be (at the time of her second marriage) a virgin or not; him whom (his) father or mother may give is called 'a Dattaka son;' 'a Krîta son,' is one sold by his parents; a 'Kṛtrima son,' is one made for himself; a 'Sahoḍhaja,' is a son of a pregnant bride; an 'Apaviddha,' is one who is received when rejected (by his parents); each successive one of these offers the piṇḍa (performs funeral ceremonies) and takes a share, in default of the one before him."

Succession of substitute sons.

Of these twelve sons, in default of the first the next offers the piṇḍa (*i. e.*) performs funeral rites), and 'takes a share,' (*i. e.*) takes the wealth.

28. Manu has mentioned an exception to the Aurasa son succeeding to the property, (viz., if) there be an Aurasa and also a Putrika son:—" When a son is born after a daughter has been appointed (to bear a son,) the partition must be equal, for there is no primogeniture for a woman." Vas-

Case of a Putrika son, when there is also an Aurasa son.

ishṭha also mentions an exception;—" After he (a Dattaka) has been received if an Aurasa son be born, the Dattaka takes a fourth part." Kâtyâyana also says :—" If an Aurasa son is born, other sons of the same caste are to take fourth parts, but those of different castes get food and garments." " Those of the same caste," Xetraja, Dattaka, &c.; they take a fourth part if there be an Aurasa son. " Those not of the same caste;' Kânîna, Gûdhotpanna, Sahoḍhaja, and Paunarbhava sons; these, if there be an Aurasa son, do not take a fourth part, but only food and garments; such is the meaning.

Two classes of substitute son.

29. Vishnu says :—"The Kânîna, Gûdhotpanna, Sahodhaja and Paunarbhava sons are not excellent, they do not share the piṇḍa or property." This is a prohibition of a fourth part (for them,) if there be an Aurasa son. Manu also has said :—" The single Aurasa son is lord of his father's property, but he should give the others means of subsistence to avoid wrong." But this is in praise of the Aurasa son, and not to forbid a fourth part, as otherwise the sayings of Vasishṭha and Kâtyâyana which award a fourth part would be liable to a charge of being nonsense. But as for this in which is also said by him (Manu) viz.: ' Let him give the Xetraja son a sixth part of the father's wealth, but let the Aurasa son take the paternal heritage remaining, viz., five shares," in regard to this the decision is as follows; if the son possess eminently good qualities, he gets as his share a fourth part; but if he be perverse and deficient in virtue, the sixth part; if he be only perverse or deficient in virtue, then a fifth part.

But as for what Hârîta says, viz; " On (the property) being divided, let him give a one and twentieth part to the Kânîna son; a twentieth part to the Paunarbhava son; a nineteenth part to the Gûdhotpanna; a seventh part to the Dvyâmushyâyana; an eighteenth part to a Xetraja; a seventeenth to a

daughter's son, and let the Aurasa son take the rest." This refers to sons not of the same caste and who are not wicked. But Manu says "The Aurasa, Xetraja, Datta, Krîta, Gûdhotpanna and Apaviddha, are the six sons who are kinsmen and share the heritage; the Kânîna, Sahodha, Krîta, Paunarbhava, Svayandatta and Çaudra, are the six sons who are kinsmen but do not share the heritage." Thus he mentions two classes of six each, and states the first class of six is kin, and shares in the heritage; that is to say, the first class of six shares the father's a Sapiṇḍas' or a Sâmânodakas wealth, in default of other heirs who have a preferential right. The last six have not this relationship. However it should be explained that the faculty of performing the funeral rites, and which is by reason of belonging to the same Gotra or by Sapiṇḍaship, belongs to both classes equally; and each in succession takes the father's wealth in case of default of the one before, for Manu by the saying, "Not the brother nor the father's but the sons take the father's property,"--teaches that all the sons and substitutes besides the Aurasa, succeed to the father's property.

Dvyamushyayaṇa.

30. But a Dvyâmushyâyaṇa son inherits the property of his natural father, as Yâjñavalkya says:—"A son begotten with authority by one who is childless on the wife of another is rightly heir to both and presents the piṇḍa for both fathers." C. When a brother-in-law, &c., is appointed by a Guru or other such person, or of his own accord being childless, begets a son on the wife of a childless man, either for his own or the other's sake, such son with two fathers is a Dvyâmushyâyaṇa, and he takes the wealth of both, and offers the piṇḍa for both. But if a man who has a son begets of his own accord on another's wife a son for that other, then such a son is the son of the husband of the wife, and not of the man who begot him; and he does not take the property of the man who begot him, nor does he offer the piṇḍa for him; as has been said by

Manu :—"There are two owners here of what is produced, viz., the owner of the seed and the owner of the field, by reason of special agreement for the seed, but if no agreement regarding the produce has been made by the owner of the seed and the owner of the field, then it is evidently the property of the owner of the field, as the receptacle is of more effect than the seed."

C. The meaning is this; if a field is given by the owner to the owner of seed for the purpose of reception of seed, on the understanding that what is produced in it belongs to both, then the owners of the seed and the field are both owners of what is produced. What is produced in another's field by the owner of the seed, without any agreement having been made, is the property of the owner of the field. As for example, in the case of cows, horses and the like, the womb is of more effect than the seed. Permission by the Guru, &c., refers to a betrothed virgin, as Manu has forbidden any other kind :—

"Appointed, being anointed with ghee, and silent, let him in the night, beget on the widow a single son; but by no means a second. As this commission is thus fixed, a widow woman is not to be appointed by the twice born to conceive by any other [than the husband] for they who appoint her to conceive by another violate the eternal law. This appointment is nowhere mentioned in the marriage texts; nor is intercourse for such purpose with a widow spoken of in the rule of marriage. This practice of cattle is despised by learned Brahmans, though said (to be the custom) of men while Veṇa governed; he formerly possessing the whole earth, and a Râjarshi, made a mixture of the castes, because his mind was overpowered by lust. From that time the good despise a man who through delusion appoints a woman for the sake of offspring."

(But if you rejoin), is there not then an alternative as there is a direction and also a prohibition, and thus the reference

to a betrothed maiden for such appointment is improper? we say it is not so; because Manu allows such an appointment:—" If the lord of a maiden happens to die after betrothal, her brother-in-law should take her by this rule; having approached her in the proper way, she being clad in a white garment and chaste, let him have intercourse with her once in a season till she bears a child."

Dattaka, &c., do not inherit their natural father's property.

31. Dattaka sons, &c., do not share in the wealth of their natural father, thus Manu says:—

" A Dattrima son may never share in the family or property of his natural father; the piṇḍa follows the family and estate; the funeral offering departs from the giver (of a son.")

The mention of a Dattrima son is to include Kr̥trimas, &c.

But these rules are obsolete.

32. The texts which go to prove that the other substitute sons besides the Datta share in the inheritance, refer to some other age of the world; because it is prohibited in another Smr̥ti to receive them as sons in the Kali age:—" The receiving of others than the Datta and Aurasa as sons, the begetting of offspring by a brother-in-law and retiring to the forest, all these practices the wise have said should be avoided in the Kali age."

Çûdra's property.

33. Yâjñavalkya has mentioned a difference in the partition of a Çûdra's property, " Let a son though he be begotten by a Çûdra on a slavegirl, take by his father's will a share; when the father is dead, the brothers (on partition) should make him a sharer by (giving him) a half (share.)"

C. " By his father's will;" if his father wills it, he receives a share. After the father's death, then if there are also by a married woman (wife) sons (who are his brothers), they should give the son of a slavegirl half of a share (such as they get). But if there are neither sons nor daughters by a

married woman (wife), nor children of such (sons and daughters), then the slavegirl's son takes all the wealth; *i. e.*, in their default, he takes the whole.

But a son by a slavegirl begotten by (any of) the twice-born, does not get a share, even by his father's wish; nor even half a share, still less the whole property, because of the specification, "by a Çûdra." However the opinion is that he gets enough for subsistence, if well disposed.

Succession to a man who leaves no male issue.

34. Yâjñavalkya has laid down the rule of succession to (the property of) a man who has no son as follows:—"The wife and daughters, the two parents, brothers, also their sons, kinsmen of the same Gotra (family), distant kinsmen, pupil and fellow-students, in default of one preceding the next, shares the property of a man who has gone to heaven without leaving a son. This is the rule for all castes." C. "Who has no son;" a man who has not one of the twelve kinds of son, Aurasa, &c. If (such a father) dies, in default of his wife, &c., the next succeeding takes his property. This rule applies to all; to the Mûrddhâbhishiktas, &c., who are born of admixtures in the direct order of caste, to Sutas &c., who are born of admixtures in the reverse order, and to Brahmans, &c. Such is the meaning.

Wife.

35. The wife is a woman who has been sanctified by marriage, she takes first the wealth of her husband; as Bṛhaspati says:—"The wife of the man who dies leaving no son, takes his wealth though there be kinsmen; though parents and uterine brothers be alive."

Vṛddha Manu mentions difference regarding this case:—"A wife (*i. e.*, widow) who has no son, who preserves, inviolate the bed of her husband, and is steadfast in her duty, should offer the piṇḍa for him and take the whole share."

C. " The whole share," consisting of the movable and immovable property. So Prajâpati says :—" Taking his property, movable and immovable, the silver and base metal, grain, liquids, and clothes, let her cause the Çrâddhas in each month, at the sixth month, and in each year, to be offered. Let her reverence her paternal uncles, priests, daughter's sons, her husband's sister's children, maternal uncles, old men, and guests, with the offerings to the pitṙs and gods."

Daughters.

36. In her default, let daughters whether of equal caste or not, take according to their shares; as Bṙhaspati says :—" A wife succeeds to her husband's wealth, and in her default a daughter. A daughter of a man like a son springs from each limb; equal, married to a man of equal caste, she is good, delighting in submission; how then could any other human being take the paternal wealth ?"

Kâtyâyana has given the rule for the case when there are both married and unmarried daughters :—" The wife, if she go not astray, takes the wealth of her husband; in her default, an unmarried daughter among married daughters; if there be some betrothed and some not, the daughter who is not betrothed takes." So Gautama says :—" Strîdhana belongs to daughters not married nor betrothed." It must not be thought that this text applies only to a mother's property, for it applies equally to a father's property.

Daughter's sons.

37. In default of a daughter, a daughter's son succeeds. So Vishṇu :—" In the case of a man who leaves no son, grandson, or descendant, daughter's sons, take his wealth; for in performing the funerals of their ancestors, daughter's sons are said to be equal to son's sons. Manu also says :—" By the male child of equal caste, whom a daughter whether appointed or not, shall bear, the maternal grandfather possesses a grandson; let him offer the piṇḍa and take the wealth." And we

ought not to think that the saying, " and daughters, the two parents," is incorrect, on the ground that the daughter's son should be mentioned by reason of his taking the property, for the word " and" in the words " and daughters," includes a daughter's son.

Parents.

38. In default of a daughter's son, the two parents share the wealth. Now some persons say, that though no rule exists as to the order in which the two parents take the wealth, yet because 'mother' comes first in the separated word,* and she is nearest, the mother takes the wealth first. Others say, that the wealth first goes to the wife; and then in her default, to the daughter; and in her default, to the father, and in his default; to the mother, according to the saying of Bṛhad Vishṇu:—" of a man who has no male issue, the wife born of the same caste, and the daughters; in their default, the father, mother and brothers, have been declared (heirs." So also Kâtyâyana:— " They say that the father takes first." In this case what is proper that should be admitted.

39. In default of the parents, brothers share the heritage. So Manu says:— " Let the father take the property of an issueless (son deceased), or the brothers.

Brothers.

But of the brothers, uterine brothers first share the heritage, because they are nearer. For Manu says:—" He who is the Sapiṇḍa in course of succession, let him have the wealth."

Succession of brother's sons.

40. In default of brothers, their sons take the paternal wealth, according to their fathers. But we must conclude that as in the former case of brother's sons, the sons of uterine brothers first share the heritage; and in their default, the sons of half-brothers.

* *i. e.*, The word 'pitarau,' both parents (dual) is supposed to stand for 'mâtâpitarau,' mother and father.

But if there are concurrently brothers and brother's sons, brother's sons should not succeed; because it is laid down, that brother's sons succeed in default of brothers. If however a brother dies without male issue, and all his brothers succeed to his property, and if any brother dies before the partition of such issueless brother's property, if he has children, because they derive a right from their father, partition between them and the brothers of the father, is proper.

Gotrajas, &c.

41. In default of brother's children, persons of the same Gotra take the property. Persons of the same Gotra are, a paternal grandmother; Sapiṇḍas, and Sâmânodakas. The paternal grandmother succeeds first to the property; for "if the mother be dead, the father's mother should take the property;" and this is the text which is the authority for the paternal grandmother succeeding as heir after the mother.

"Now the property of a person without male issue goes to the wife; in her default, to the daughter; in her default, to the father; in his default, to the mother; in her default to the brother; in his default, to a Sakulya; in default of Sakulyas, to a Bandhu; in default of Bandhus, to a fellow-pupil; in his default except in the case of a Brahman's property, it goes to the king; but a Brahman's property, Brahmans take." "The wife of the same caste or daughters of a man who leaves no male issue, take the property; or in their default, the father, mother, brother, or his sons are mentioned." As there are thus a number of contradictory texts as to the order of succession, they must be understood to indicate the right of a paternal grandmother and not the order of succession. In default of a paternal grandmother, paternal uncles and their sons succeed in order. In default of issue of the grandfather, the great-grandfather, his sons and grandsons succeed. As far as the seventh, Gotrajas take the property. In default of Sapiṇḍas, Sâmânodakas take the property, and they (Sâmânodakas) are the seven males

beyond the Sapiṇḍas, or as far as there is recollection of birth and name. As Vṝhan Manu says:—"The relationship of Sapiṇḍa ceases with the seventh; the relationship of Sâmânodaka with the fourteenth; some say, (it continues) as far as there is recollection of name and birth; after that it is termed Gotra." In default of Gotrajas, Bândhavas take the property; and they are of three kinds, as has been shown by Baudhâyana:—"Sons of one's own father's sister, sons of one's own mother's sister, and sons of one's own maternal uncles, are one's own Bâudhavas. Sons of one's father's father's sister, sons of one's father's mother's sister, and sons of one's father's maternal uncle are called father's Bândhavas; sons of one's mother's father's sister, sons of one's mother's mother's sister, and sons of one's mother's maternal uncle are called mother's Bândhavas." But he who is nearest among the Bândhavas takes first. So Bṝhaspati says:—"Where there are many kinsmen, Sakulyas and Bândhavas, he who is nearest of them should take the property of a man who leaves no issue."

Bândhavas.

42. In default of Bandhus, the teacher (of the deceased) succeeds; and in his default, the pupil. So Manu says:—"He who next succeeds after the piṇḍa, let him take the property; then after him, let Sakulyas, the teacher and pupil, take it." Âpastamba however says:—"In default of a Sapiṇḍa, the teacher succeeds; and in default of the teacher, a pupil; in default of a pupil, a fellow Brahmacârin; and in his default, any Çrotriya (Vedic priest)." Gautama says:—"Let Çrotriyas share the wealth of a Brahman who leaves no issue." In their default, it belongs to Brahmans, as Manu says:—"In default of all the heirs beforementioned, Brahmans who are learned in the three Vedas, pure and subdued, share the property; in this way the law is not violated." A Brahman's wealth never goes to the king. Nârada also says:—"If there be no heir to a Brahman's property, on his death it must be given to a

Succession of teacher, &c.

Brahman, otherwise the king incurs guilt." The author of the summary says :—" In default of the father, the property belongs to the father's descendants; in their default, to the grandfather's descendants, and so the Sapiṇḍas beyond share the property. In their default, Sakulyas, the teacher, or pupil a fellow Brahmacârin, &c., and good Brahmans; in default of the former, the next succeeds. But let the king in default of a brother, take a Çûdra's property; or in default of a teacher as the property of a Xatriya or Vaiçya."

Disquisition.

43. But is not the rule that the wife takes first the property of a man without issue improper? For Nârada has said that, even if there be wives, the brothers take the property and support the wives :—" If any one among brothers, dies or renounces worldly affairs (*i. e.*, become a religious mendicant) and leaves no issue, the rest may share his property except the Strîdhana, and let them support his wives as long as they live, if they preserve undefiled the bed of their husband; but from others they may resume it (the Strîdhana)." We reply that this is not so, for if the text commencing from, " If any one among brothers dies and leaves no issue, &c." to, " the share of a re-united brother is approved for them," refers to re-union, then it would by the text, " the share directed for re-united persons, that is for them; otherwise let there be a partition, (*i. e.*, the natural heirs share it); if there be any (brothers) without issue, let it go to the other (brothers)," be liable to a charge of tautology; so on this account it refers to undivided (co-parceners). So the text of Yâjñavalkya :—" The wife (widow) takes first the property of her husband who has been separated and has not been re-united," does not involve a contradiction. But as for what Manu says :—" Let the father take first the property of an issueless son or let the brothers," and as for what Kâtyâyana says :—" Let the father take the property of an issueless son who has been separated, or the brother, or sister, or mother, or his father

in order," Manu's text does not refer to the order in which they take; because an alternative is implied by the word 'or,' and the text of Kâtyâyana refers to the case in which a father, &c. take an issueless son's property, because his wife (widow) is an adulteress; but a virtuous wife (widow) takes the husband's property, for he (Kâtyâyana) has said :—" A vicious, shameless wife who wastes the property, and a woman given up to adultery, deserve not Strîdhana." The meaning is, she does not deserve a wife's share, but only enough for her support. Dhâreçvara however with reference to the consequence of such texts as, " the wife takes the property of an issueless husband," has laid down a different rule, viz: that it is only a wife of an issueless man who has been divided and who seeks appointment (to procreate children) that takes the property of her husband, for as Manu says :— " He who keeps the estate and wife of his deceased brother, if he begets a son for his brother, he must give the son that wealth. If a younger brother begets a son by the wife of his elder brother, let there be in that case an equal partition; thus the law has been declared." He considers that in the case of a deceased brother with divided wealth, the wife's succession is through her son only, and not otherwise; so also if he be undivided. Gautama however says :—

" Let those who are connected by the piṇḍa, Gotra, and ṛshi share the wealth (of a deceased person) who is issueless; or his wife (widow); or let her conceive." And the author of the Summary says :—" Let a wife who has been appointed by her Gurus order (to bear offspring) take the wealth, if the brothers who have been divided are deceased; whether they were united or not." But this is wrong, because there is nothing said about appointment in the text." The wife, daughters, &c. " But if you rejoin that though nothing is said about it, yet that such an appointment is proper because of the force of what Gautama says; we reply that you are wrong; because Gautama's saying has another

meaning. For the meaning of Gautama's saying, " Let those who are connected by the piṇḍa, Gotra, or r̆shi share the wealth, or let the wife widow of a man who has left no issue conceive," is as follows; if she conceive, let the wife of a man without issue take the wealth; or let those connected by the piṇḍa Gotra and r̆shi and take the wealth of a man who leaves no issue; or let the wife take it; or let that wife conceive; or let her remain chaste. And this is because there is no condition implied, as 'or' expresses an alternative. But as for Manu's saying " He who keeps, &c. this refers to a Xetraja son's right to property; and the Summary verse refers to a chaste widow, and not to one appointed to conceive by her husband's brother. For otherwise the sayings of Manu and Kâtyâyana, " Let a childless widow being chaste, preserve inviolate the bed of her husband; let her present the piṇḍa for him and take the whole share;" and, " Let a childless widow chaste, preserving inviolate the bed of her husband, subdued, enjoy till her death the property; let the heirs take after her," would be liable to a charge of being inconsistent. The conclusion which prevails accordingly is that the wife takes the property of her deceased husband who was divided and not re-united.

Women may have property.

44. But the saying which teaches that women cannot own property, viz:—" Property is acquired for the purpose of sacrifice, women have nothing to do with that; they all do not share in the property, but enjoy only food and clothing. Wealth is for the purposes of sacrifice, therefore let him (the king) distribute it among proper objects, not among women, fools, or wicked persons," refer to property acquired for the purpose of sacrifices. But of Kâtyâyana's saying, " Wealth to which there is no heir goes to the king, except what is necessary for funeral rites, servants, and women, and except the wealth of a Çrotriya," the meaning is as follows; having deducted what is necessary for the feeding and clothing of

the women, other wealth to which there are no heirs goes to the king, but in the case of a Çrotriya's wealth after having deducted what is necessary for the funeral, servants, and women, such wealth belongs to a Çrotriya and not to the king. And Nârada has said:—" Let a king who is intent on justice take the property except in the case of a Brahman; let him furnish means of livelihood for his (the deceased's) women; this is the proper rule." But both these texts refer to well-behaved women, for the word 'wife' is not mentioned. As for what Hârîta says:

Concubines.

—" If a widow who is youthful becomes self-willed, means of livelihood must always be given her as long as she lives;" this refers to a woman suspected of adultery. The text of Prajâpati, " To a woman deprived of her husband an âḍhaka (of rice) should be given till her death;" and (the text in) another Smṝti, " For food, a prastha of rice in the afternoon with fuel," both agree with the saying of Hârîta. As regards the vedic text, " Therefore women are powerless (nirindriya), (and) do not succeed to the heritage;" this means that the wife does not get a share in the pâtnîvatagraha, for we see the word 'power' (indriya) is used in the sense of soma; *e. g.*, " indriya is 'somapîtha,'" (*i. e.*, soma-drink).* The text of Bṝhaspati which prohibits a wife from taking immovable property, viz;" " Let the wife whose husband is dead and who was divided, leave the immovable property, and take some pledge, &c.," is only prohibitory of the widow selling or making away with immovable property without the consent of the other heirs; else it would be inconsistent with the text, " Let the widow take the immovable and movable property, the gold, base metal, grain, liquids, and clothes; let her cause the Çrâddhas to be offered in each month, the sixth month, &c. Let her honor with offerings to the gods and pitṝs, paternal uncles, gurus, daughter's sons,

* v. Black Yajur-Veda S. II. 3, 2, 7. The first quotation is from the same, VI. 3, 8, 2.

the children of her husband's sisters, his maternal uncles, also old persons and guests."

Definition of re-union.

45. Manu has given the rule for partition in the case of one who enters into re-union :—" If divided (members of a family) live together and again make partition, let there then be equal partition ; there is no (right of) primogeniture." Nevertheless the prohibition of unequal partition, is in order to unequal partition according to the wealth (contributed), when the wealth of those re-united, is unequal (before re-union).

By whom effected.

Bȓhaspati says in answer to the question, by whom can a re-union be made ? " He who having been separated, again out of affection resumes his position with his father, brother or paternal uncle, is said to be re-united with them." C. A son, &c., who has been formerly divided by a father, &c., and again through affection takes up residence with him (father, &c.) is said to be ' re-united ;' but not if he has taken up his residence with any one whatsoever. Such is the meaning.

Partition in the case of re-united members.

46. Bȓhaspati has described the mode of partition in one case of re-united members of a family : —" If any one among re-united (members) acquires anything extra by learning, valor, &c., a double share must be given him ; the rest take equal shares." That is, a double share of the extra wealth acquired by learning, &c., is to be given him, but not a double share of all the wealth. This is in order to the partition of what is acquired without injury to the united wealth.

Succession in the case of a re-united co-parcener who leaves no issue.

47. Yâjñavalkya explains the succession to the property of a re-united (member) who has no issue :—" One re-united takes the share of his deceased re-united (co-parcener,) but should give it up if a son be born. A uterine brother also succeeds (in the same way) to a uterine brother."

C. The meaning is as follows. The other (surviving) re-unit-

ed brother should give the share of a re-united brother deceased, to the child born afterwards of a wife whose pregnancy was not known at the time of partition; but in default of a son, the re-united (brother) should take the estate, not the wife, &c., but he must support the wives, and daughters not betrothed. Nârada has also said this:—"And let them support his women as long as they live, provided they preserve, inviolate the bed of their husband, and from others they may resume it," (*i. e.*, the Strîdhana). The daughter's maintenance should be allowed out of her father's share:—"Till her ceremony (marriage) is performed let her take a portion, afterwards let her husband support her." "So a uterine brother, (the estate) of a uterine brother." (*i.e.*) Let a re-united uterine brother give the estate of a deceased re-united uterine brother to a son born afterwards; and in default of a son, let him take it for himself; but a re-united half-brother (can) not (do so), and this is an exception to what was said before. He has also said that if there be a re-united half-brother and a separated uterine brother, both succeed to the partible wealth: —"Let a half-brother who is re-united take the wealth, not a half-brother (who is divided,); let a uterine brother whether re-united or not take (the property), and not the son of another mother." C. A half brother who is re-united takes the property of his half brother; but not so, if he is not re-united. A uterine brother though not re-united takes the wealth of a uterine brother; not however a half brother, though he be re-united. Manu says:—"If the eldest or youngest of them (*i. e.*, the brothers) fail to get his share at the partition, or should either of them die, his share is not lost, his uterine brothers having come together should divide it equally, as also his brothers who have been re-united and his uterine sisters." C. The meaning is as follows; If in the case of re-united half brothers any one of them, viz: either the eldest, youngest, or middlemost, at the time of partition fails to get his share by reason of his having gone to another country

or for a similar cause, his share is not lost; it should be kept separate, and the re-united members of the family may not take it; but the separated uterine brothers and the re-united half-brothers and uterine sisters, although they have gone to other countries should come together and share equally that which is kept separate, not making the shares lesser or greater, (one than another). Other (teachers) are of opinion that the meaning of the text, "although he is not re-united let him take, but not the son born of another mother though re-united," is, if there be re-united half brothers and uterine brothers who are not re-united, though not re-united, the uterine brothers take the property and not the half brothers, though they be re-united. Now the text of Manu, "If the eldest or youngest, &c.," is in order that all, viz: re-united half brothers and children of one mother who are not re-united, may take the wealth, and refers to both kinds of property, immovable and movable. Hence Prajâpati says:—"Let what concealed wealth there may be, belong to those who are re-united, but let those who are not re-united, take according to their shares, the land and house." C. The meaning of which is, the concealed or secret wealth consisting of movable property, belongs to the re-united half-brothers according to their shares; but the immovable property consisting of houses, land, &c., belongs to the uterine brothers who are not re-united. The text of Yâjñavalkya refers to the case in which there is either movable or immovable property. In this case what is reasonable, that must be admitted.

If there be no re-united half brothers then the re-united father or paternal uncle takes, for Gautama says:—"When a re-united parcener is deceased a re-united parcener shares his wealth." If there be not a re-united father or paternal uncle, a half brother who is not re-united, succeeds to the property. In his default, the father who is not re-united; and in his default, the mother. In her default, the wife. So Çankha says:—"The wealth of one deceased with-

out issue goes to the brothers; in their default both parents should take, or the eldest wife." C. " Eldest ;" (*i. e.,*) superior by good qualities, chaste; not the wife married first.

Nârada has given the rule of succession where there are both wives and re-united brother's sons :—"When the husband is dead, if the wives (bhâryâḥ) have neither brother, father, nor mother, (they) and all the Sapiṇḍas should divide the wealth according to their shares."

C. " Wives who have neither brother, father nor mother ;" (*i. e.*) who have not a brother, father or mother of their husband. " All the Sapiṇḍas ;" brother's sons, &c. The meaning is, that, in this case the sons of brothers take according to their father's shares, and wives according to their husband's share, of the property of a re-united parcener. In default of wives, the sister takes the share of a re-united childless parcener; as Bṛhaspati says :—" Next, she who is his sister, deserves a share ; this is the rule for one without issue and who has neither wife nor father." C. " And;" in order to include the case where there is neither a brother nor mother. Some however read, ' she who is his daughter,' and state that in default of wives, daughters take the property. In default of daughters and sisters, all the Sapiṇḍas, &c., succeed according to their nearness of relationship ; as is said, the next Sapiṇḍa succeeds, and so on by default of those mentioned in succession. So Bṛhaspati says :—" If a person without issue or a wife (bhâryâ) is deceased, if he has neither brother, father, nor mother, then let all the Sapiṇḍas divide his property according to their shares."

Succession to a hermit, &c.

48. Yâjñavalkya has said in regard to the succession to a hermit, devotee, or perpetual student :—" The heirs to a hermit, devotee or student, are in order the teacher, virtuous pupil, the brother in religion who is a member of the same order." C. In this case the teacher takes in the inverse order, the property of a perpetual student ; not the father and so on.

The father, &c., take the property of an Upakurvâṇa student; but a virtuous pupil (*i. e.,*) who is able to learn, retain and teach sacred knowledge, takes the property of a devotee, as a pupil of bad character does not deserve anything. A brother in religion who is a member of the same order succeeds to the property of a hermit. "A brother in religion," is one who has the same teacher. "A member of the same order" is one who belongs to the same religious orders; (*i. e.,*) a brother in religion who is also a member of the same religious order. Or the meaning is, that, a religious teacher, virtuous pupil, and brother in religion who is a member of the same order, take in succession the property of a hermit, devotee or student, and that in default of the first, the next succeeds.

As for the text of Vasishṭha: "Those who have entered another order do not get shares," it is to prohibit members of one order from succeeding to property of members of a different order, but does not prohibit members of the same order from inheriting from one another.

Disquisition.

But as these hermits, &c., have no property, how can there be inheritance of it? For acceptance and such modes of acquisition are forbidden to them; and the text of Gautama, "the religious mendicant who (acquires) property, &c.," also prevents acquisition of property. But this is wrong; for a hermit may have property, as is said:—"He may gather together property for a day, a month, six months, or even for a year, but all that he has, let him give up in the month of Âçvayuja;" and a devotee may have clothes and books and such things by texts such as, "A devotee may take clothes for a kaupîna*

* The cloth fastened to a string round the waist and passed between the legs; the only article of dress allowed to hermits. To Çankarâcârya (a famous hermit) is attributed a little song in praise of an ascetic life, each verse of which ends, "The wearers of the Kaupîna are indeed happy."

and for covering himself; he may also take such things as are necessary for his religious duties, and a pair of shoes." A perpetual student also may receive what he requires for bodily uses. Of such things, partition takes place.

Exclusion from inheritance.

49. Manu has mentioned those who are unworthy of inheritance:—"Degraded persons, those born blind, or deaf, madmen, idiots, those who are dumb, who have some limb deficient, do not share the heritage." C. "Those who have some limb deficient;" who have a limb impaired by disease. Nârada also says:—"He who hates his father, or who is degraded, an eunuch, one who has been turned out of caste, such if they are legitimate sons, may not obtain a share, how then if they are Xetrajas?" Those who are sick with long and severe diseases or who are dumb, mad or lame, must be supported by the family; their sons may take shares. Vasishṭha adds:—"Those who have entered another order do not get shares." Yâjñavalkya says:—"An eunuch, one who is blind, an outcast, his son, one who is lame, mad, or an idiot, is blind, or afflicted with an incurable disease, &c., are to be supported, (but) do not get shares." C. "His son;" the son of an outcast. By the words "et cetera," the dumb, &c., are included. "Those do not get shares;" do not share in the property, but are to be supported by gifts of food and clothes only. Manu says that it is a sin not to support such persons:—"It is just that those who are wise should give all of them food and clothes perpetually, according to their power. He who gives not, is degraded."

"Perpetually;" as long as they live.

Devala says that there is no obligation to support an outcast:—"For them, except those who are degraded, let food and clothes be provided."

C. By the word 'degraded', the sons of such are indicated. As Baudhâyana recollects:—"One should support them except the outcast and his son."

Persons also who have entered another order need not be supported; so Vasishtha says:—"Those who have entered another order do not get shares, nor eunuchs, madmen, or outcasts; eunuchs and madmen are to be supported." The children however of those who do not deserve shares, get them, as Devala says:—"Let his children, if without fault, take their father's share in the heritage." Legitimate (Aurasa) and Xetraja sons of those without shares get portions, provided they are free from impotence and similar defects: but not adopted (Dattaka) sons, &c.; so Yâjñavalkya says:—"Their Aurasa and Xetraja sons if without fault, take shares."

The daughters of those who do not get shares are to be supported till they are married, and their ceremonies are to be performed for them. Women who are well-behaved are also to be supported as long as they live; so he says:—"Their daughters are to be supported while unmarried, their childless women also, as long as they are well-behaved. Adulterous and refractory women are to be expelled." Vyâsa mentions others who do not get shares:—"The son of a woman not married in order, or one begotten by a sagotra (blood-relation) are to be banished; there is no wealth for them." Manu also says:—"Both the son of a woman not appointed, and the son begotten by a brother-in-law on a woman who has children, these (viz., a Jârajâtaka and a Kâmaja) do not deserve a share."

Succession to Strîdhana.

50. Yâjñavalkya states (the rule for the) partition of Strîdhana:—"What a father, mother, husband, or brother, has given her, what is presented before the marriage-fire, and what she gets on her husband's second marriage, &c., that is called Strîdhana. What is given (as a nuptial present) by her relatives, her Çulka, and presents made after her marriage, if she die without offspring let her bândhavas take." C. "What is presented before the marriage-fire;" (*i. e.*) what is given by her maternal uncles, &c., before the fire at the time of marriage,

as Kâtyâyana says:—"What is given to women at the time of marriage before the fire, that is called by the good, Strîdhana presented before the marriage-fire."

"What she gets on her husband's second marriage;" (*i. e.*) what is given to a superseded wife on account of (her husband's) second marriage.

By the words "et cetera" property purchased with what is given during the procession, &c., is included; so Manu:—"That given before the marriage-fire, that given at the procession, that given in token of affection, and that obtained from a mother, brother, or father, are considered the six kinds of Strîdhana." Six (is mentioned) in order to exclude a less, not to exclude a greater number."

Kâtyâyana explains the nature of that which is given at the procession and out of affection :—"What a woman who is being led from her father's house gets, that is called Strîdhana given during the procession; whatever is given her out of affection by her mother or father-in-law, and in return for her respectful greeting, is called a gift of affection." C. "Given by relatives;" (*i. e.*) what is given by the mother, father and relatives of the maiden. "Çulka" (*i. e.*) that which is taken, and (then) the maiden is given away. "Presents made after marriage;" (*i. e.*) that which is given after the marriage. As Kâtyâyana has said :—"What is received as the price of utensils for the house, or cattle, or milch cows, for personal ornaments or for work, that is called Çulka. What is received by a woman after marriage from her husband's or from her parent's family, that is called a present made after marriage." Kâtyâyana has mentioned a peculiarity in regard to gifts of property made to women by their parents, &c :—

"Strîdhana up to the amount of two thousand (Kârsh̲âpaṇas) except immovable property should be given to a woman by her father, mother, husband, brother, or relations, according

to their means." The meaning is, property not immovable to the value of two thousand Kârshâpaṇas should be given. This rule is to be understood of a gift every year. But this is not a rule of limitation in the case of a payment made once for all on account of subsistence for several years; nor is there a prohibition regarding immovable property (in that case.) Hence Saudâyika property even if immovable, has been pronounced by him capable of being alienated at will:—"That obtained by a married woman from her husband, or by a maiden in the house of her father, from her brother, or parents, is called Saudâyika; women have independence in regard to their Saudâyika property. Because this means of subsistence (Saudâyika) is given by these persons to quiet them, the independence of women in regard to selling or giving away Saudâyika property has always been allowed, even if it be immovable."

Nârada has mentioned a peculiarity in regard to immovable property given by the husband:—"That which has been given to a woman by an affectionate husband, even after his death she may consume as she likes or give it away, except immovable property." Kâtyâyana says that what is given fraudulently, &c., by the father, &c., is not Strîdhana:—"What is given to her conditionally, either by her brother, father, or husband, or fraudulently, that is not Strîdhana."

C. "Given conditionally;" ornaments and the like, for the purpose of wearing them at a festival, &c.

"Fraudulently;" with intent to cheat. This is the meaning.

He also says that what is obtained by a woman by any art is not Strîdhana:—

"Over whatever is gained by arts, and what is given out of affection by others than her relations, her husband has dominion; the rest is called Strîdhana." "By others;" viz., by friends, &c.

In the case of a woman, deceased, who leaves neither daughters, daughter's daughters, daughter's sons, sons, or son's sons, then her bândhavas, her brother, &c.,* take this Strîdhana. The order of succession is as follows. On the decease of the mother the daughter takes first; so he has said:—"The daughters take what remains of their mother's (property) after debts are paid; and in their default, the issue." Gautama (says): "Strîdhana (belongs) to daughters unmarried or without wealth." In default of daughters, daughter's daughters take, by the text of Yâjñavalkya:—"If there be offspring of the daughters." The shares are according to the mothers, where there are uneven numbers of daughters by different mothers.

Thus Gautama says:—"The distribution (may be) for each set according to the several mothers."

Manu says in regard to the co-existence of daughters and granddaughters:—"Something out of affection should be given out of the grandmother's estate to their daughter's daughters. In default of grand-daughters, grandsons share the estate." So also Nârada says:—"Daughters of the mother (take); in default of daughters, the issue." The meaning is, in default of daughters and grand-daughters, the issue, that is, the grandson succeeds. In default of grandsons, by Yâjñavalkya's text, "Let the sons after their parents' death share equally the property and the debts, &c.," the sons share the mother's wealth which remains after the discharge of her debts. As for what Manu says, "On the mother's death let all the uterine brothers and sisters divide equally the maternal wealth," this does not mean that sons and daughters jointly succeed to a mother's property, but is on purpose to effect an equal division, if they (the sons,) do succeed to the property. Çankha and Likhita's text, "All the uterine brothers and the maidens deserve equally the maternal

* Other MSS., husband, &c.

wealth," means the same as the text of Manu. Both these texts, however, refer to Strîdhana received from the husband's family.

Bṙhaspati says in regard to this:—"The Strîdhana goes to her children, and her daughter shares in it if unmarried; a married daughter gets only something as an honor." "Children;" male children. As for what Pâraskara says, "Strîdhana is said to belong to an unmarried daughter, a son does not get anything; if there be a married daughter, the son gets an equal share;" this refers to daughters who are unmarried. So Manu says:—"As Yautaka belongs to the mother it is the share of the maiden daughters." "Yautaka" is what is obtained from the father's family. The daughter of a fellow wife of superior caste takes the property of a childless woman of lower caste; in her default, her offspring. So Manu says:—"Whatever wealth a woman may have had given her anyhow by her father, let the Brahman daughter take that; or let her children have it." "Brahman daughter;" this is to specify (wives of) superior caste. In default of sons, grandsons succeed, as they also have authority to discharge a paternal grandmother's debts by the text, "The debt is to be paid by the sons and grandsons." (If you argue) such authority to discharge the debts does not include inheritance, (we reply that) this is wrong; because by Gautama's text, "Let those who inherit, discharge the debt;" the heirs have to discharge the debts.

In default of grandsons, the husband, &c., inherit. Manu mentions a peculiarity in this case according to the kind of marriage by which the deceased wife was espoused:—"It is ruled that the property of a woman who dies without issue shall go to the husband if she was married by the Brâhma Daiva, Ârsha, Gândharva, or Prâjâpatya forms of marriage. But whatever was given on an Âsura marriage, &c., if she dies without issue, it is ordered, shall go to her father and

mother." The meaning is, the wealth that belongs to a woman married by the Brâhma, Daiva, Ârsha, Gândharva and Prâjâpatya rites in default of issue to inherit, viz., from daughters down to grandsons, goes to her husband; and not to her mother, &c. But of a woman married by the Âsura, Râxasa and Paiçâca forms of marriage, the wealth goes to the father and mother. As for the text of Kâtyâyana, "What has been given by the relatives; in default of relatives, belongs to the husband;" it refers to the property of a woman married by the Âsura, &c., forms of marriage. So he also says:—"The paternal wealth of a woman received at an Âsura or the like marriage, in default of her children, belongs to (her) father and mother."

The brothers inherit the Strîdhana called Çulka, though given by the husband, &c.; so Gautama says:—"After the death of the mother, whole brothers take their sister's Çulka. The meaning is, in default of the mother it belongs to the brothers. The same (author) also says:—"The bridegroom takes back his own Çulka," but this must be understood of (a wife) deceased after taking the Çulka, and before the ceremony. So Yâjñavalkya says:—"If she dies, what has been given, he should take back, after paying the expenses of both." However whatever in the shape of ornaments, &c., is given to a maiden by her maternal grandmother that her brothers should take; as Baudhâyana says:—"Let her uterine brothers share equally the property of a deceased maiden; in their default, the mother succeeds; and in her default, the father." A uterine brother succeeds to the property of a daughter (putrikâ) without issue, so Paithînasî says:—"The husband takes not the wealth of a putrikâ who is deceased, but it is ordered that the brother should take it on the decease of a maiden without issue." If the father of such a daughter has afterwards an Aurasa son (legitimate son,) he and not the husband takes the property. As for the text of Manu, "If a daughter (putrikâ) is deceased without issue, the daughter's

husband should take the property without hesitation;" it is to be understood to imply (that this is to be done) if a brother is not afterwards born. As for the text of Bṙhaspati, by which sister's sons, &c., take a childless woman's strîdhana, "The mother's sister, the wife of a maternal or paternal uncle, the father's sister, the mother-in-law, the wife of an elder brother, are said to be equal to a mother. If they have no Aurasa son nor daughter's son, nor grandson, the sister's son, &c., shall inherit their property;" the meaning is this; in case of marriages by the Brâhma and similar rites, in default of the husband, and in the case of marriages by the Âsura and similar form of marriage, in default of the father and mother, the mother's sister's son, &c., take in succession the property.*

Husband may in certain cases take his wife's Stridhana.

51. Yâjñavalkya has said that in some cases a husband may take the property of his wife though she be alive and have children :—"The husband need not (against his will) restore to his wife Strîdhana taken during a famine or for religious purposes, or in sickness or in confinement." C. "In confinement;" in prison, &c. If he takes the property, having no wealth of his own, he should not restore it to her, but he should restore what he has taken in any other way; so Kâtyâyana says :—"Neither the husband, nor the son, nor the father, nor the brother, have any authority over strîdhana, to receive or make away with it. If any of them consumes forcibly the strîdhana he should be made to return it with interest, and should also be fined. Even if permitted through friendship he consumes it, if he be rich, he should be forced to restore the capital." Devala also says :—"Means of subsistence, ornaments, çulka, and gain are all called strîdhana. She may consume them as she pleases; the husband, except in distress, cannot

* v. Dâya-Krama—S. II. 6. Stokes' Hindu Law Books, p. 498.

touch (such property.) He should return it with interest to his wife if he makes away with it or gives it away."

52. Kâtyâyana mentions what is partible property:—

Partible property.

"On partition by heirs, the grandfather's and father's property, and what has been self-acquired, all this is divided." What has been self-acquired (*i. e.*) while dependent on the father's property; because what is acquired while independent of that, is not partible. These three kinds (of property) remaining after debts (are discharged,) are to be divided. So he says:— "After paying debts, and return-gifts, let the remainder be divided." If there be not property sufficient for the discharge of the debts, the debts should be divided according to the text, "The property and debts are to be divided equally." He has also declared that the property and debts are to be examined in order to prevent fraud, &c.; "Such a debt is to be discharged jointly with the kinsmen on partition. Utensils, cattle, milch kine, ornaments and slaves, when seen are to be divided. Bhr̆gu has directed the Kosha ordeal in the case of concealed property." The mention of the Kosha is to prohibit other kinds of ordeal; so he says:—"In the case of concurrence of doubts and bad faith among heirs on partition, and in case of the agency of a member of acts, one should enforce the Kosha."

53. Yâjñavalkya describes non-partible property:—What

Non-partible property.

else is self-acquired without injury to the paternal property, a friendly gift, or present on a marriage, does not belong to the co-heirs. He who recovers it need not give up to the co-heirs property descended in due course, if it has been taken away; nor what is gained by learning." C. "What is self-acquired;" (*i. e.*,) by agriculture, &c., without causing loss to the paternal property, and what has been received from a friend on a marriage, that also does not belong to the

brothers, &c., of the acquirer. But property that has come by descent through the father, &c., and has been taken away by thieves, &c., if not recovered by the father, &c., belongs to him, by whom by permission of the father, &c., it has been recovered. But in the case of land, the recoverer gets a fourth part, and the rest belongs to all the co-heirs, as Çankha says:—" If any one by himself recovers afterwards land previously lost, the rest get their proper shares after giving a fourth part to the recoverer." So what has been gained by learning, teaching, &c., is one's own." 'If (gained) without injury to the father's property,' is in every case understood. Hence Manu has said:—" What one has gained by labor without injuring the father's property, he need not give that to the co-heirs; nor what he has gained by learning." C. " By labor;" agriculture and the like. The mention of the father is in order to include those co-heirs who are undivided. Vyâsa:—" What is obtained by learning, wealth got through valour and saudâyika, is not to be claimed at partition by the co-heirs, it belongs to the other (*i. e.*, the acquirer.)"

Kâtyâyana has defined non-partible property acquired by learning:—" If learning has been acquired by the use of the property of another, or elsewhere, wealth acquired by such means is called (wealth) gained by learning. What is gained by learning (as a prize) in a contest for a stake, one should know to be wealth gained by learning, and it should not be divided. What is acquired from a pupil, or by the priestly office, by answering a question, by deciding a difficult question, by display of one's knowledge, by a contest in learning or by reading the Vedas, the learned have pronounced to be wealth acquired by learning, and it is not to be divided. What is gained by learning, by having vanquished another for a wager, Bṛhaspati has declared to be wealth acquired by learning and not to be divided. This same rule applies to artizans, and what is gained above

the ordinary price. What is gained by force of learning, from a person who has a sacrifice performed, or a pupil, they have pronounced to be 'wealth acquired by learning;' what is acquired otherwise is common." So what besides 'wealth acquired by knowledge,' and what is acquired by the use of the property of an undivided father, &c., that is common, or the joint property of the undivided co-parceners. Nârada says that in some cases even wealth acquired by learning is to be divided:—

"A member of a family though he be ignorant, who supports his brother while learning science, shall get a share of the wealth acquired by that brother by learning."

Kâtyâyana:—"Bṛhaspati says that the wealth of brothers who have been taught in the family, or even by the father, and what is gained by valour, is to be divided." C. Wealth acquired by those who have been taught by the uncle, &c., or even father, in an undivided family, wealth that is acquired by valour or by knowledge, such wealth acquired by learning, is to be divided."

Vasishṭha says that the acquirer gets a double share in the case of wealth acquired by learning got at the expense of the father's property:—

"If any one of them gains anything by himself he gets a double share." But as for (the direction) "equal partition in the case of increase of the joint wealth has been ordered," that refers to wealth acquired by agriculture and means other than learning. Gautama has mentioned partition at the will of the acquirer in the case of impartible wealth acquired by learning:—"A learned man may give at will of what he has acquired by learning." Nârada says (he need) not if he does not wish (to do so):—"A learned man need not give to an unlearned co-heir a share of his own wealth, except he chooses; unless it was gained by means of the paternal property." Kâtyâyana says that a learned man even though

willing to do so should not give a share to an unlearned co-heir:—"A learned man should never give of wealth acquired by learning to unlearned co-heirs, but such wealth should be given to those co-heirs who are equal or superior in learning to the acquirer." He has also declared that wealth acquired by valour, &c., is like wealth acquired by learning, not to be divided:—"Wealth gained by valour or by learning, and what is called strîdhana, all this is not to be divided by the co-heirs at the time of partition. What also has been taken under a standard that is not to be divided." C. He gives the definition of 'that which is taken under a standard:'—"That which is taken in battle, &c., after routing the force of the enemy by one who has given his life on account of his master is said to have been taken under a standard." Bṛhaspati:—"What has been given by the grandfather and father or by the mother to any one, of that he is not to be deprived, so also wealth gained by valour and a wife's property (bhâryâdhana) are not to be taken away." Kâtyâyana has described 'wealth gained by valour:'—"Where in doubt one does a daring deed and his master is pleased with him, then on account of that deed whatever he gains that is 'gained by valour."' Vyâsa has directed as in the case of wealth gained by learning, a double share for the acquirer, in the case of 'wealth gained by valour,' if the acquirer depended on the property of the father, &c.:—"Whatever wealth a brother obtains by valour or the like having used common property, (such as) a vehicle or weapon, his brothers have shares in it. Two shares must be given him but the rest get equal shares."

Manu has mentioned other things which are not to be divided:—"Garments, vehicles, ornaments, dressed rice, water, women, what serves to give security, and pasture, they (the learned) call impartible."

C, "Garments;" garments worn by the father. But they

are to be given away after the father's death at partition to the partaker of the Çrâddha, and so Bṛhaspati also says :— "Garments, ornaments, beds, the father's carriage, &c., having adorned these with perfumes and garlands they should be given away at the Çrâddha."

The other horses and clothes are to be divided. "Vehicles;" viz., horses, &c., palankins, and such conveyances. What has been used by any one is his, but all that has not been used is to be divided. Ornaments too that have been worn by any one belong to that person; what has not been worn is common property, and is to be divided. "Let not the heirs divide ornaments worn by women when their husbands were alive; if they do divide them they lose their caste." This is because of the distinction, (viz., that) "they had been worn." "Dressed rice;" cakes, cleaned rice, such things are to be consumed according to the occasion and are not to be divided.

"Water;" receptacles for it, wells, &c., if uneven in number are to be enjoyed in succession, and not to be actually divided. "Women;" female slaves; they are, if uneven in number, to be made to work in succession for each co-heir. So Bṛhaspati says :—"Let a single female slave be made to work in each co-heir's house according to their shares." If there are many such slaves, they are to be distributed in equal shares; such is the rule regarding slaves. But those female slaves who were possessed by the father, though even in number, are not to be allotted, as Gautama says :—"There is no partition of female slaves who have been possessed."

"What serves to give security;" (Yogaxema) "Yoga;" means of gaining what one has not got; it denotes a sacrificial act to be accomplished by Çrauta or Smârta rites. Xema denotes an act of piety such as making a pond or grove and gifts to Brahmans, and which is a cause of the preservation of merit gained. Both of these though gained with prejudice to the paternal wealth are not to be divided, as Laugâxi says :— "The wise say that 'Xema' means an act of piety, and

'Yoga' a sacrificial act; such acts have been declared indivisible; as also a bed or seat." But some say that by the works 'Yoga' and 'Xema' are intended umbrellas, fans, shoes, arms and the like. Others say a king's minister, priests, &c., are intended.

The way of ingress and egress to and from pasture, houses, and gardens, is not to be divided. As for the saying to the effect that land cannot be divided, viz., "presents made at sacrifices, a field, vehicles, prepared rice, water, and women, are not to be divided even to the thousandth generation of kinsmen" it means that land obtained by acceptance is not to be shared by the son of a Brahman wife with the son of a Xatriya wife; for there is a text, "land obtained by acceptance is never to be given to a Xatriya wife's son."

Others are of opinion that clothes, &c., are to be divided. So Bṝhaspati says:—"They who say that clothes, &c., are not to be divided have not well considered the matter; the wealth of rich men composed of clothes and ornaments if in common could not be used, and it cannot be given to one; having considered the matter it must be divided, otherwise it would be useless." By selling the clothes and ornaments, collecting a written debt, by exchanging prepared rice for rice, a division may be made.

"Pasture land is to be enjoyed by the co-heirs according to their allotments." If you say that the texts of Manu and Uçanas which show that clothes, &c., are not to be divided should by reason of this text not be respected, you are wrong; for if texts are contradictory, it is proper to try to adapt them to circumstances, and not to refute them. As has been said before, Bṝhaspati's text refers to clothes, &c., which have not been worn; there is thus harmony.

Fraudulent partition, &c.

54. If any one has cheated at the time of partition and it is afterwards found out, all should share equally. So Yâjñavalkya says:—"When property (fraudulently) taken by one from the other

at partition is discovered afterwards, the rule is that they should divide it by equal shares."

C. " Equal ;" to prevent unequal partition. " They should divide ;" the plural number is to show that he who discovers it is to seize it. Manu however says when all the wealth and debts have been properly divided if any property is discovered afterwards it should all be distributed equally. " Property that has been unequally divided in opposition to the rules of the Çâstra should like property taken away, &c.; be again equally divided." So Kâtyâyana says :—" What has been taken by one from another, and what has been improperly divided, let that afterwards be divided by an equal division ; this Bhr̆gu has said." This being the case, it is inferred that the partition is of the embezzled property that has been afterwards discovered, and not of what has already been divided.

Manu says:—" After the partition has been made if anything which is common property is discovered that is not a partition, it must be made again." This must be understood of discovery before waste or increase of the divided property; otherwise the words " Taken one from another, &c.," would be objectless. Of the Vedic text, " he who deprives a sharer of his share, him (the deprived) punishes, if he does not punish him, he punishes his son or grandson ;" the meaning is this ; he who deprives a sharer, (*i. e.*) one worthy of a share of his share, that is does not give him a share, the one deprived of a share punishes, (*i.e.*) destroys, the depriver; that is, makes him sinful. If he does not destroy him, he destroys his son, or grandson. The text of Manu, " If an eldest brother out of covetousness deprives his younger brothers, such an eldest brother is not to have a share, and is to be punished by the king," is to show the guilt of an elder brother who though independent, takes away the common property, and *a fortiori* of younger brothers who are not independent. Otherwise the Çruti would be limited by the Smr̆ti.

Effect of partition.

55. Nârada relates what the divided (parceners) can do:—"If there are many sons of one man who perform their duties and rites separately and who have different employments and qualities, if they do not concur in acts and if they give or sell by themselves, they may do as they like, for they are masters of their own property." C. If several divided brothers (being) sons of one person, without mutual consent perform sacrifices and acts of piety which are carried out by means of wealth, and also perform agricultural operations which are accomplished by expenditure of wealth, and if also they are possessed of separate property, such as mortars pestles, and if such brothers do not concur in the acts, and if they do any act without regard to them, (*i. e.*, the others), if such brothers separated by nature give, sell, or receive, they may do so at their will; for they who are separated, are masters of their wealth, are independent, (*i. e.*,) lords of it, such is the meaning. As for the text of Bṙhaspati, "divided and undivided co-heirs are equal in regard to immovable property, one by himself has no power over the whole, either to give, pledge, or sell," this must be explained (as follows); in the case of co-heirs who are not divided, because no one by himself has power over the common property, the consent of all must certainly be obtained; but among divided co-heirs, the consent of all should be obtained in order to facilitate the transaction, by prevention of doubts in aftertime, as to who were divided and undivided; not because one alone has no power; hence even without the consent of a divided (co-heir) the transaction holds good.

As for what is said in another Smṙti, "By consent of people of one's village, of kinsmen, neighbours, and heirs, and by the gift of gold and of water, land goes to another owner," the meaning is as follows: "Consent of people of one's village," this is introduced for the purpose of making the transaction known, for by the Smṙti, "let there be pub-

licity of acceptance, especially in the case of immovable property," the transaction is not effected without the consent of people of the town. "Consent of the neighbours," in order to prevent doubts about the boundaries, &c.

The "consent of kinsmen and heirs" is in order to facilitate the transaction by removal of doubts as to who are divided and who are not. "By gift of gold and water;" this is to be done on occasion of a sale of land. The meaning is, that one should by giving gold and water, effect the sale of immovable property in the form of a gift; because the sale of land is forbidden by the text—"There is not sale of immovable property, one should pledge it by permission," also because the acceptance and gift of land are both laudable:—"He who receives and he who gives away land, both do virtuous acts, and both certainly go to heaven."

Proof of partition.

56. Yâjñavalkya has mentioned the circumstances that establish partition in case of denial:—"In case of denial of partition its existence is to be ascertained by means of near or distant relations, witnesses, &c., documents, and by (separate) appropriation of houses and land."

C. "Near relations;" relations of the father. "Distant relations; maternal uncles," &c.; "Document;" (*i. e.*) deed of partition.

By these means certainty as regards partition is to be known.

"Appropriation;" by separate houses and land.

Nârada has mentioned another proof of partition in case of doubt:—"In regard to partition of co-heirs there is certainty by means of kinsmen, and documents, or by reason of separate transactions. The religious duty of undivided brothers is single; if there is partition, this duty should be separate for each; divided brothers may become witnesses or sureties for each other, and may give and receive one from another,

but undivided (brothers) may not do so. And in this case there is acceptance of gifts, also receiving cattle, rice, land, houses. Also gifts, religious duties, expenditure and income are separate for divided (brothers.) Those for whom such acts are done with their own property let (people) consider as separated, even without a document." Bṛhaspati says:—"There is no doubt that they are divided whose income, expenditure, and wealth are separate, and who have between them loans and business transactions." It is to be understood that certainty as to partition is known if there be no witnesses, by such distinctive signs, as loans, trade, &c., so he also says :—" If there are no witnesses, a crime, immovable property, ownership, and former partition of co-heirs, are to be ascertained by inference." He also mentions the distinctive signs of crimes, &c. " A motive for enmity against a relative, hatred, and stolen property are proof of a crime; enjoyment of immovable property is a proof of ownership; and separate wealth of partition."

C. " Motive for enmity against a relative;" motive for hatred between ancestors. "Hatred;" mutual dislike. " Stolen property;" the sight of a little piece of property taken away by force. " Enjoyment of property," (*i. e.,*) by one's self. The existence of the distinctive sign of partition is to be inferred from mutual and separate receiving, &c., because that is forbidden between undivided co-heirs. As Yâjñavalkya says :— " Between brothers, husband and wife, father and son, except after partition, there is neither capability of being a surety, being indebted, or capability of giving evidence." Though the use of ordeals is allowed by the text, " If certainty cannot be ascertained by witnesses, documents and possession, then if inference fail, it may be settled by ordeal," yet as Vṛddha Yâjñavalkya has forbidden it in case of doubt as to partition, the existence of it (partition) is to be settled by means of relations, witnesses and documents, but let it never be settled by ordeal. How then is there certainty ? Manu says in regard

to this :—" If there is doubt in regard to partition of co-heirs among themselves, partition must again be made even by those who have separate abodes." The meaning is, that, partition is to be carried out again if the doubt cannot be settled by inference. But as for what he also says :—" Partition is made once, a maiden is given once, 'I give' is said once, these three are done only once," this is to be understood of the case in which it is possible by inference, &c., to ascertain the truth.

Fraudulent demand for fresh partition to be punished.

57. Bṛhaspati says that one who disturbs a doubtful partition that he has agreed to should be punished by the king :—" He who being separated by his own will breaks his promise, is to be confined to his own portion by the king, and also punished for his crime." " Crime ;" (*i. e.*,) obstinacy.

APPENDIX.

THE following quotations occur in the foregoing work. Where it was possible to refer to the original texts, the number of the chapter and verse or Sûtra of each quotation has been given and the page here on which it is to be found; otherwise the page only is given. Quotations marked* are anonymous in the original, but have been identified.

Âpastamba (Dharma-Sûtra,) ; ii, vi, 14 ; 1,6,7,8,9,13, (p. 10,) do. 3, (29.)

Uçanas, 52, (i.e. Bṛhaspati.)

Aitareya Bṛâhmana, ii, 7 ; (53.*)

Kâtyâyana, 9,11,13,21,26,27,30,32,41,(4) ; 42,45,46,47,48,49(2,) 50,53.

Gautama, (Dharma-Sûtra,) 3,* 9,11,36,(do.) ; 29,31,36,38.43,44,49, 51.

Candrikâkara, (Smṛti candrikâ,) 19.

Devala, 3,12,19,39,40,46.

Dhâreçvara, 1,31.

Nârada (Smṛti.)

Chapter, xiii,v, 1 ; (p. 1) ; 2 and 3, (7,43,) ; 4, (9) ; 10 and 11, (49) ; 12, (9) ; 16, (7) 21, (39) ; 24,5,6, (30) ; 25,6,7, (35) ; 34, (19) ; 36, 7,8,9, (55) ; 42,3, (53) ; 52, (33.)

Other texts attributed to the same source occur on pages 17, 29, 37,42 but are not in the printed text of Chapter xiii. The above texts offer many variations, which however do not affect the sense. v, v, 24 and 26 (p. 30) are inverted according to the printed text of Dr. Bühler.

Pâraskara, 44.

Prajâpati, 8,26,33,36.

Paithînasi, 45.

Bṛhaspati, 8,9, (2) 11,13,16,17,25,26,29,34 (2) ; 37,44,46,48,49,50,51, (2),52,54,56,57.

——— Vṛddha, 12.

Baudhâyana, 29,39.45.

Bhṛgu, (quoted in text of Kâtyâyana,) 52.

Manu.

Chapter viii, v, 340, (p. 4.)

ix,47, (57) ; 52,3, (23) ; 60,4,5,6,7,8, (23) ; 69,70, (24) ; 104, (1) ; 105, (8) ; 106, (44) ; 107, —'112,6,7, (8) ; 105, 2, 7, (8) ; 131, (44) ; 134, (26) ; 135, (45) ; 136, (26) ; 142, (24) 149,152, 3, (16) ; 146, (31) ; 147, (40) ; 154, (17) ; 155, (17) ; 159, 160, (22) ;

Chapter ix—

163, (21); 164 (2) ;185, (22,27,30); 187,† (27); 188(29); 192, (43); 193, (43); 194, (44); 196, 7, (44); 198, (44); 200 (50); 201, (39.) 209, (13); 210, (34); 211,2, (35,6); 213, (52); 216, (14); 218, (53); 219, (50). x. 115, (5)

——— Vṛddha, 25,29.

Medhâtithi, 19.

Mitâxarâ, (Vijnâneçvarayogin), 19.

Yajur Veda (Black) S. II, 3,2,7* ; VI, 5,8,2.*‡

Yâjnavalkya, Ch. II, v. 52, (p. 56); 147, (7); 115, (8); 116, (10); 117, (8,43); 118, (47); ——, (10); 120, (11); 121, (12); 122, (13); ——, (14); 123, (15); 124, (18); 125, (16); 127, (22 & 52); 128-32,(20); 133, (24); 135,6, (25); 137, (37); 139, (34); 140, (39); 141, (40); 143, (40); 147, (46); 149, (55)

Chap. iii, 47, (38).

——— Vṛddha, 56.

Laugâxi, 51.

Vasishṭha, 15,21,38,39,40,49,

Vishṇu, 5,6,17,21,26.28*

——— Bṛhad, 27.

Vyâsa, 15,16,17,40,50.

Cankha, 2,7,20,36,48.

Cankha and Likhita, 43,

Sangraha, (summary) 2,3,10,30,‖31,¶

Hârîta, 2,21,33.

Besides the above there are anonymous quotations on 5(2)12,14, (Colebrooke attributes this to Bṛhaspati) 15,24,28(2),44. (The C. on the Mitâxarâ mentions this as spurious). 54 (2). The last on this page is from the Brahma-Vaivarta Purâṇa according to Colebrooke (p. 377.)

In the rest of the work (not translated) the Mahâbhârata, Pitâmaha the Bhavi*sh*ya-Purâṇa, Samvarta and Bhṛgu are quoted besides the above mentioned works.

† This half verse differs in both the places where it is quoted in the text; and neither agrees with the printed text of Manu.

‡ Another explanation of this text is given in the C. on the Black Yajur Veda, Vol. I, p. 667.

‖ This verse varies in all the MSS. The best text seems to be "in default of the father, the wealth (belongs to) his father's descendants, and in their default to his grandfather's descendants, and so the sapindas beyond share the property. In their default let the Sakulyas, teacher and pupil be (sharers), (or) a fellow Brahmacârin and good Brahmans, &c.

¶ This v. is very corrupt in the first half. It apparently ought to be—"if the brothers were divided, and *there are no re-united* (brothers.)"